Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States

JEFFREY R. GOLIN AND ELSIE Y. GOLIN
ON BEHALF OF THEMSELVES
AND AS NEXT FRIENDS FOR DAUGHTER
NANCY K. GOLIN,
Petitioners

v.

CLIFFORD B. ALLENBY, DIRECTOR
DEPARTMENT OF DEVELOPMENTAL SERVICES,
STATE OF CALIFORNIA
AND
SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondents

On Petition for Writ of Certiorari
To The Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether parents retain a constitutional liberty interest in the care, affection and association with a willing retarded daughter after the age of adulthood.
2. Whether a willing handicapped or incompetent adult has a corresponding constitutionally protected liberty interest in her continuing protection by her dedicated family.
3. Whether a State may impose involuntarily custody and conservatorship on a merely mentally disabled non-dangerous adult daughter, remove her from her family and home, and place her in State institutional care without giving preference to the wishes of her caring parents, and the person herself, under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, and *Olmstead v L.C. by Zimring*, 527 U.S. 581 (1999).
4. Whether State-sponsored programs for the mentally retarded may be compulsory for a family of a retarded adult daughter despite parental rights to the care and upbringing of their child established in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)
5. Whether a family residence can be rejected as the "least restrictive environment" under the *Olmstead* integration mandate in favor of a RCF under the supposition that "segregation according to disability" is preferable because it facilitates "socialization with peers"?

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U.S. Constitutional Amendment XIV:

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws....

Section 5: The congress shall have the power to enforce by appropriate legislation, the provisions of this article.

42 U.S.C. §12132 (Title II of ADA):

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

28 C.F.R. § 35.130 (Integration Mandate)

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

PETITION FOR A WRIT OF CERTIORARI

Jeffrey R. Golin and Elsie Y. Golin, parents, next friends and lifelong caregivers of Nancy K. Golin, respectfully petition this Court on behalf of themselves and their daughter for a writ of certiorari reviewing a judgment of the Supreme Court of the State of California denying a petition for review of the California Court of Appeals for the 6th District's denial of a writ of mandate and prohibition, to reverse an involuntary conservatorship order.

OPINIONS AND ORDERS BELOW

The following orders are included in the appendix.

April 28, 2004: California Supreme Court denial of a Petition for Review and Stay of Sixth District Court of Appeals denial of Motion for Transcripts to be Provided on Appeal (S124153) (App., *infra* 1a).

April 9, 2004: California 9th District Court of Appeals Order Reversing Proceeding by Settled Statement, Ordering to Proceed by [previously denied] Transcripts, (H026861) (App., *infra* 2a).

February 24, 2004: California Supreme Court denial of Petition for Review of Sixth District Court of Appeals denial of writ of mandate and prohibition for conservatorship proceeding. (S122012) (App., *infra*, 3a)

January 6, 2004: California Court of Appeals for Sixth District denial of writ of mandate and prohibition for immediate review of decision of trial court granting conservatorship to State. (H0126829) (App., *infra*, 4a)

November 10, 2003: Orders of the Superior Court of Santa Clara County granting conservatorship of Nancy K. Golin enumerating six powers to be removed and granted to the State of California Director of Developmental Services for an indefinite period. (1-02-PR-151096) (App., *infra*, 5a-13a)

October 22, 2003: Statement of Opinion of Santa Clara County Superior Court Probate Division in support of judgment granting limited conservatorship of Nancy Golin to State of California Department of Developmental Services denying competing petition of parents. 1-02-PR-151096) (App., *infra*, 14a-31a).

These decisions are all unreported.

JURISDICTION

The order of the California Supreme Court that is sought to be reviewed by this Court, denying petitioner's Petition for Review of the Writ of Mandate opposing the involuntary and contested conservatorship of their daughter Nancy Golin, was denied on February 24, 2004. The Order of the California Supreme Court of April 28, 2004 is also sought to be reviewed denying appellants request for transcripts on behalf of their incompetent daughter and next friend Nancy Golin, effectively denying them the ability to appeal her institutionalization.

The United States Supreme Court has jurisdiction in a writ of certiorari from the denial of the California State Supreme Court of a Petition for Review, due to its jurisdiction over final decisions of a State Court provided by 28 U.S.C. §1257(a). No rehearing was sought or is available from this judgment except through this Court. This petition is not sought under Rule 12.5, cross petition. Rule 11 does not apply here. The State Supreme Court did not certify to the Attorney General that the constitutionality of a State statute was called into question.

STATEMENT OF THE CASE

A. Characteristics of the Family

Nancy Katherine Golin ("Nancy") is a 34-year-old autistic adult, severely retarded since birth. An only child, she has lived with and been raised and cared for at home since birth by dedicated parent-petitioners Jeffrey and Elsie Golin ("the parents") until 3 years ago. They know their daughter well and care for her deeply. She had epilepsy since age 22 maintained by anti-seizure medications. She has a propensity to wander that the parents closely monitor. She is non-aggressive, has never been diagnosed with mental illness or had psychiatric medications prescribed for her, nor has ever committed or been charged with a crime. She is unable to read or write, and speaks only a few words, but understands and communicates very effectively with gestures, expressions and actions. She is alert,

happy, charming, beautiful and gentle, optimistic and brave, patient and persistent, emotionally and motivationally normal. She has a positive, sunny disposition, the pure innocent product of a lifetime of love and devotion. Her autism is atypical in that she is very sociable, relates well to people, and has no tics, self-injurious or ritualistic behaviors. She is ambulatory and able bodied, can toilet, dress and feed herself, and can tie her own shoelaces. She and her parents are profoundly attached to one another, and her parents remain with her constantly at all times. Her parents always put her needs before their own, priding themselves on having protected her from State institutionalization, integrated into normal community activities. The parents never saw it necessary to conserve her.

Mrs. Golin is a long time vocal critic of San Andreas Regional Center (SARC), the private non-profit corporation exclusively responsible for State programs for the retarded in Santa Clara, Santa Cruz, San Benito and Monterey Counties, for their negligence or indifference towards the "weakest among men", and the number of their clients they regularly kill through neglect. Mrs. Golin sought in vain for years during Nancy's formative years using every available means to obtain appropriate services such as speech therapy from local schools and SARC. She eventually gave up and obtained the best services she could find on her own in spite of State harassment. Together with her husband of 44 years, a professional engineer and postgraduate of MIT, they have spent a lifetime seeking the best available resources for their daughter's special needs. Their experience with State programs is they always did more harm than good. They failed Nancy's individual needs, caused her severe injuries[1], and exposed her to bad behaviors she mistakenly copied.

Mrs. Golin received minimal compensation for 9 hrs/day as a 24-hr caregiver under State supervision from

[1] Nancy's delayed epileptic condition likely resulted from a traumatic head injury she suffered in a poorly supervised SARC program at age 8. Her mother removed her. All her classmates there ended up being institutionalized at an early age, except Nancy.

California's IHHS (In Home Health Services) program, from 1996 – 2001; Nancy had MediCal, and SSI paid Mrs. Golin, who always spent far more than what she received on Nancy's needs. The family was praised for many years by IHHS workers, receiving admiration and support from agencies, friends and local police [2].

The parents are fit, active semi-retirees, owning operating a family neon lighting business they founded in 1990 to give them the time and flexibility to care for and provide activities for Nancy. Nancy loves to watch her father work, and the family goes on frequent outings and hikes together. The parents take her with them everywhere they go and treat her like any normal person.

B. Daughter Abducted by State from Her Family

On the evening of November 14, 2001, Nancy wandered from her parents and got lost while they were moving their workshops to neighboring Palo Alto. The parents noticed her absence within five minutes and called the local police ("police") immediately for help searching the area all night. She could not be found. Next morning Nancy found her way back herself, tired but delighted, well and unharmed, to her parents' intense joy and relief.

The police duped the unsuspecting parents, advising them they only intended to take Nancy to Stanford Hospital to make sure no one had harmed her while she was missing. Police took Nancy without warrant or notice saying the parents could meet them there. The parents cooperated without objection. Police delayed three hours, then took her to a locked psychiatric ward at Stanford and obtained a TRO against her parents.

When they arrived at Stanford ER, the surprised parents were denied admission to see her or talk to doctors. Security guards told them Nancy had been placed on a psychiatric hold and turned them away on threat of arrest. The parents were justifiably terrified. Nancy had never been alone in a hospital without a parent there for history

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[2] IHHS ended on Nancy's removal and SARC got her SSI and benefits. SARC gets far more public money than did her mother.

and informed consent, and had never been in a psychiatric ward. The staff let Nancy wander into rooms of dangerous mental patients climbing into their beds seeking her usual maternal comfort, eating from their dishes.

Police created a cover story to psych ward doctors that Nancy was supposedly a homeless urchin, the victim of abuse and neglect by the parents, saying that she was "*found in a shed behind a pile of garbage*" pretending at first she had had no doctors or medical records. They insisted that Nancy had head lice, so when the doctors could find no head lice they dutifully treated her with Nizoral shampoo for "*presumptive* head lice". She had a foot injury that Stanford doctors knew or should have known their own ER doctors had caused with a misplaced IV five months before. Her mother immediately had it grafted and followed by a chief surgeon at Alta Bates when Stanford doctors refused to treat it. Yet police quoted a Stanford psychiatric resident saying that the fully healed graft was an neglected open, infected wound of unknown origin.

SARC and Santa Clara County Adult Protective Services (APS), claimed immediate custody of Nancy at the hospital without protective custody proceedings. The police generated a report, in which most witness statements were either misreported or falsified, including ones from SARC. SARC complained from their institutionally biased view that Nancy needed to be placed in State residential care instead of living at home, and that the parents since a 1993 SARC injury to Nancy, "refused services".

Police misled Stanford psych ward doctors claiming Nancy's mother was overmedicating her on her Phenobarbital seizure medication. This was based on an old, discredited complaint by an intern who caused Nancy seizures two years before by erroneously cutting Nancy's neurologist's prescribed dose in hospital. These levels are highly individual as any qualified neurologist knows. In reality, there was no emergency. Nancy Golin was perfectly fine, happy and well cared for, *until* the police took

her to the hospital![3] Nancy's blood levels were correct, had no seizures or adverse reactions on the day of admission and had not had any seizures for several months. She did not require any medical assistance whatsoever, and Stanford discharged her after two weeks for that reason.

On admission, accordingly, the clinical intake psych team led by Dr. Hayward slashed her anti-seizure medication to what they believed were "normal" levels throwing her into a week of protracted *grand mal* seizures due to undermedication. Neurology consult Dr. Schwartz was called in on 11/17/01. He remembered Nancy from a previous admission, and wrote on the 11/17/01 hospital record admitted into evidence, "*her level was good at time of admission*", and by 11/23/01 Dr. Deisseroth approvingly noted her levels restored close to these same good admission levels (49.3). The seizures then abated. These were the original levels that her mother, under the supervision of her regular board certified neurologist Dr. Howard Belfer of San Mateo Hospital and *Stanford's own clinical neurologists themselves*, had been administering, that the police and APS called "overdosing".

Police applied at the hospital on intake for Nancy to be placed on a 72-hour hold, Cal. Welf. & I. §5150, for psychiatric evaluation alleging, "grave disability" as their reason to admit her. Then police applied for an extension to a 14-day hold Cal. Welf. & I. §5250 for intensive treatment alleging "grave disability", and a hearing was held without notifying the parents. Both laws are inapplicable to merely mentally retarded persons or persons who can live safely with family or friends by State law[4]. Therefore, the application for the §5250 hold was judicially denied, November 26, 2001. The State lost all further legal authority for holding her. The TRO against her parents also expired.

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[3] Stanford psych ward doctors warned APS that it was unsafe for Nancy with the men there, known to be dangerous, but APS officials ignored these warnings insisting that she remain there in harms way. When seen by her parents next Nancy displayed signs of molestation.

[4] Cal. Welf. & I. §5008(h)(3), Cal. Welf. & I. §5250(d)(1). A mental health advocate warned police Nancy's detention was inappropriate.

Nevertheless, when her parents went to pick her up, Nancy had been spirited away by state authorities, refusing to disclose to anyone where she was being held[5].

C. Illegal Secret Detention; Malicious Prosecution

In fact, Nancy was illegally taken from Stanford Hospital by SARC workers and secreted at a SARC Residential Care Facility (RCF) known only to a few county workers. Her signature was forged by SARC workers to a SARC Individualized Placement Plan (IPP), legally requiring the informed consent and signature of a parent or legal conservator, to attempt to qualify it as a voluntary commitment. Nancy does not read, write or sign her name, nor does she have the capacity give such informed consent as SARC's capacity declaration states. APS records disclosed in their December 2001 records that their agents and SARC's were all fully aware she was not conserved so if the parents found where Nancy's was hidden they could do little legally to stop Nancy going with her parents, and admitted seeking to "avoid court if at all possible".

The Palo Alto Daily News, contacted by the parents, printed several sympathetic stories in late November 2001, panicking the police. The paper was unable to find Nancy's undisclosed location. The police, the DA, SARC and APS responded by faxing slanderous allegations to the paper about the parents. The police arrested them for unspecified Cal. PC §368(c) felony adult dependent abuse charges. The court set $100,000 bail, to keep the parents away from the press and almost preventing them from further legal opposition to Nancy's State custody. Police coordinated a team of four city inspectors during the search to shut down the parents' business on code violations to cripple them financially from being able to fight back. But the parents fortunately bailed out after one night in county jail and went back to fighting for their daughter's freedom.

After the parents' attorneys discredited the police ver-

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[5] Even though released and her §5250 application denied, Stanford gave the RCF a discharge prescription for Trazidone, an antipsychotic, for her caregivers to dope her with as needed.

sion of events to the Santa Clara County DA's office and her doctor wrote the court a letter rebutting their supposed allegations, the DA knew or should have known there was no merit to these charges. Yet the DA continued to search for other grounds on which to prosecute them for 14 months. Extensive DA-subpoenaed records studied by the parents revealed ample proof of parental innocence. and state conspiracy and abuse. DA ignored repeated requests of the parents' attorneys to specify grounds for the charges. This gave California Department of Developmental Services (DDS), nominated by SARC, time to pursue its conservatorship petition in Santa Clara County probate court before the DA dismissed charges.

Four months after police seized Nancy, March 2002, after APS was threatened with contempt, visits began one hour per week, oppressively supervised by APS, at an outside visitation center to strictly guard the location of her hiding place from friends and doctors. The Golins observed Nancy displaying persistent unreported signs of sexual molestation and drugging. She repeatedly begged her parents to take her home with them by trying to pull them out the door with her or selecting her father's car key out of his pocket and giving it to him, as she had always done to ask to be taken out.

D. Secret State Conservatorship Petition

SARC and DDS proceeded in secret in April 2002 to petition in probate to conserve Nancy and keep her in secret detention, seeking permission to put her into a State hospital, without giving the parents required notice of the proceedings against their daughter. DDS petitioned under Cal Hlth. & S. Code §416.5 applicable only to abandoned persons, seeking to avoid parental preferences. DDS and the Public Defender's Office (PDO) attorneys protested on record in four monthly probate hearings before probate judge Hon. Katherine Gallagher that it was impossible to notify the parents, knowingly misrepresenting, their "whereabouts were unknown," or that they had been "convicted of abusing Nancy" and were in prison, despite the weekly visits with Nancy and the attorney contacts.

E. Interim Conservatorship, Charges Dismissed

In August 2002, Gallagher ordered SARC to notify the unsuspecting parents of the DDS conservatorship petition. They objected to it, rebutting the State's unfounded allegations, and filed their own competing petition. The probate investigator refused to qualify them. This was finally heard on October 15, 2002 by Hon. Gregory Ward. The DA attended as a spectator. The Golins were unrepresented but were allowed by Ward to speak articulately in great detail, repudiating APS's and SARC's allegations.

Ward appointed an independent conservator for the Golins until charges were expected to be dropped. The parents were able to discover that Nancy had suffered serious injuries at the residential care facility including an unreported and untreated broken collarbone, dislocated shoulder, psychotropic drugging and physical restraints. RCF records ironically showed she wandered from them138 times in 12 months, not reported to the police. Nancy had on one occasion taken a closet pole to break her bedroom window to try to escape. She had been taken by her SARC caregivers to SARC-approved psychiatrist Dr. Hector Cerezo, misrepresenting her behaviors and history to get him to prescribe Risperdal, an even more potent and dangerous psychotropic medication to drug her "as needed" into a constant stupor. He did not warn careworkers to monitor side effects that she suffered: tremors, Parkinson's disorder, tardive dyskinesia [involuntary movements warning signs of severe brain damage] never previously seen. Risperdal is FDA-listed only for schizophrenia, not autism. It is barred for use with persons with seizure conditions[6]. She had no neurologist for over a year because few neurologists take MediCal. SARC is unwilling to pay for anything themselves, so signs of tardive dyskinesia

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[6] Dr. John Friedberg, a leading neurologist consulted by the parents, called these dopamine inhibiting medications "chemical lobotomy", and "brain poison" and told them to get her off these drugs immediately. Cerezo confirmed this in trial. Martin cites a report by ER doctor Bason-Mitchell who admitted he knew nothing about psychotropics for authority that the Golins were "uninformed".

went unrecognized by her low-skilled caregivers. In November 2002, the psychotropic drugs were discontinued at parental insistence and her symptoms markedly improved.

The false criminal charge that had been dropped to a misdemeanor against Mrs. Golin was **dismissed** completely in the Santa Clara County Criminal Division on January 29, 2003 on a motion by the DA. The same false misdemeanor charge against Mr. Golin was **dismissed** after pleading not guilty on August 4, 2003, after the only supporting probable cause against *him* was amended to a mere allegation of supposedly "allowing" Nancy to wander away *one* (1) time on November 14, 2001. The court with the DA's approval ordered him unconditionally exonerated and the record expunged. It was conditioned in the order that *these dismissed charges would have no effect upon the still-pending conservatorship proceedings.* Supervised visit requirements were dissolved; a favorable outcome.

F. State Temporary Conservatorship Imposed

The Golins expected their petition would be approved in probate and Nancy could return home. Yet in probate a few days later Hon. Thomas Edwards moved temporary conservatorship to the State pending a contested conservatorship trial between parents and DDS. Edwards appointed opposing attorney, Santa Clara County public defender Malorie Street ("Street") to represent Nancy. Street never conferred with the parents. From the start, she did damage control for the State by attacking the Golins. She appeared at opposing counsel table with State DDS attorney Dean Stiles and SARC attorney Nancy Johnson, filing joinder motions. Stiles-Johnson-Street had worked as a team on many such probate cases since 1995.

Street advocated for the State to conserve Nancy, not the parents or other petitioners. She blocked Nancy's right to a jury. She objected to Nancy being produced in court. She insisted that Nancy remain in the same RCF where she was drugged and injured. Street argued the State had to conserve Nancy to obtain her medical records; using this power, she shut down the parents' discovery rights showing proof of State abuse on the excuse of Nancy's privacy.

She argued for the State to conserve Nancy to put her back on [brain injuring] Risperdal, asserting it benefited her. She got supervised visits dissolved by the criminal court, reinstated by probate, orders restricting Nancy to Santa Clara County and SARC jurisdiction, that her parents could not take her to a doctor, blocking her right to sue the State for injuries, and appointing her to represent Nancy. Edwards granted these instant motions without showing good cause or legal authority[7]. The certified hearing transcripts were severely altered helping the State cover this up. Thus despite the dismissal of charges the State took temporary conservatorship maintaining custody of Nancy.

Two weeks after Nancy was temporarily conserved by DDS pending trial and Street's and SARC's demanded illegal drugging on Zyprexa resumed, Nancy was rushed unconscious to San Jose Medical Center, in serious condition with uncontrolled seizures vomiting up blood and her entire esophageal lining in quarter inch chunks. This was a life threatening disorder traced to the drugging in later testimony[8]. Street's liability in advocating this as an excuse to give Nancy to the state thus created further conflicts of interest with her presumed client. The uncontrolled seizures caused severe permanent brain damage, the loss of her entire esophageal lining, a permanent pre-

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[7] The parents' attempt in May 2003 to substitute an effective non-conflicted private attorney for Nancy was denied by Gallagher.

[8] SARC concealed Nancy's hospitalization. SARC doctors lied about her condition; caregivers covered up to police. The parents could not visit her to comfort her at the hospital. Nancy could have died never seeing her parents again. Street covered up *real* state abuse for months saying the parents were alarmists or liars attacking their credibility. The parents moved on an exparte emergency motion. Gallagher gave the parents a week to prove Nancy was gravely ill, but denied a motion to compel discovery. SARC clamped a lid on their doctors. Street sought out and counseled obstruction to those served with subpoenas, alleging exclusive control of Nancy's records and concern over her client's privacy. Gallagher denied the exparte motion. In May, subpoenaed records surfaced confirming that Nancy *had* been given a life-threatening, pre-cancerous, nearly ruptured esophageal condition from Zyprexa lowering her seizure threshold. SARC ordered caregivers not to take Nancy to ER's when she had uncontrolled seizures, to prevent disclosures.

cancerous condition, and huge esophageal ulcers.

G. Conservatorship Trial: Parents v. State

In October 2003, almost two years after Nancy was illegally seized from her family, while she remained in State custody and control with the parents unable to visit, a three-week court trial was held in Santa Clara County Superior Court, Hon. William Martin presiding. He was to decide if Nancy should be conserved and if so by whom, the parents or the State, (DDS, *not SARC*).

The trial was a fundamentally unfair proceeding. The parents lacked counsel and no longer had the several tens of thousands of dollars required to retain one in such cases after being forced to dissipate their retirement funds in two years of litigation. Mrs. Golin so objected to no avail, and with difficulty the parents represented themselves. Both parents were extremely knowledgeable on the available evidence and put on an excellent case for non-lawyers. Mrs. Golin, while intelligent and an excellent witness herself should nevertheless have been represented by an attorney. Her courtroom demeanor, that of a passionate caring mother instinctively fighting for her child's welfare and not that of an experienced trial attorney, was granted no latitude in Martin's biased opinion (App., *infra*, 25a-26a)

The parents objected to Nancy being conserved arguing that it was unnecessary living in her own home with her parents but if she were conserved they should have first preference under Cal. Prob. Code §1812. The court quickly disposed one of the parents' friendly alternate candidates for conservator on suspicious procedural grounds, displaying intolerance to any petitioner other than the State. The other alternate folded under threat of attack by SARC.

Martin denied the parents' *in limine* challenge of SARC's standing; the petitioner was the State *DDS, not* SARC. SARC was represented by Johnson, a full partner in Berliner-Cohen ("BC"), a powerful personal injury and white-collar criminal defense firm in San Jose. BC's prime motivation to protect their tortfeasing client SARC from injury claims and a feared liability lawsuit by becoming Nancy's conservator was suspect, skewing the risk of erro-

neous factfinding. Martin denied parents' challenge of attorney Street for conflicts of interest. Street again blocked the parents' motion for a jury trial for their daughter claiming she alone had standing to request this, and she did not request it (App., infra, 17a). BC played lead attorney for the State orchestrating SARC's attack, tilting the playing field for conservatorship clearly favoring the State.

The parents won previously denied right to require Nancy's presence in court as required Cal. Prob. C. §1825, over the objections of the State, SARC and Ms. Street. When Nancy Golin was presented to court, on her 33rd birthday, she embarrassed the opposition by displaying obvious affection for her parents and they to her[9]. Martin reacted that there had never been any question about the love and devotion that the parents had for their daughter. He instead posed, who would make the better conservator in Nancy's presumed best interests, the parents or the State? He thus explicitly denied parental preference from the outset in competing with the State (App., *infra*, 16a). In fact, the court appears to have applied the opposite presumption that the State was more capable and fit due to their putative professionalism despite their proven abuses.

Thirteen witnesses gave testimony for the parents. Only four witnesses appeared for the State, and in each case, their testimony broke down under cross-examination. The parents presented numerous medical experts and family friends who observed and admired the family for years. Mr. Golin unreservedly praised his wife's competence and devotion as a primary caregiver and loving mother, testifying from personal knowledge she had never neglected or abused Nancy, calling such charges ludicrous.

The medical experts called by the parents built up a compelling chain of evidence proving state abuse showing that because SARC pretended to new doctors there was no

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[9] On succeeding days, Street kept Nancy out of the court as much as possible to avoid further embarrassment to the State's case, by having her deprived of water many hours before court and given behavior modification to leave the courtroom quickly to get water.

past medical history, they had subjected her to a life threatening injury and illness from drugging, and sub-standard care. This included failure to continue a necessary regimen of treatment of a past chronic hiatal hernia and esophageal condition that had been in remission. They showed a pattern of chronic orthopedic injury and abuse in state care, dental neglect, injury due to improper drugging, and caregiver indifference.

All evidence of abuse by SARC and Ms. Street was whitewashed by Martin. Critical witnesses were allowed to evade subpoenas when Martin prematurely rested the parents' case[10], imposed arbitrary time limits on key testimony, and kept out damning evidence against the State. The transcript is out of reach by the high cost and the court's refusal to provide it or any alternative settled statement procedure (App, *infra*, 1a)

The parents endured an inquisition by the Court into their finances and assets, normally not required for close relatives. They disclosed their fine recently built home in a respectable neighborhood in Merced County, 70 mi. from Nancy's RCF[11]. Prior to November 2001, they had sufficient cash to purchase a house for Nancy. These resources were squandered fighting the State.

SARC's staff psychologist Ms. Mulhoe testified that Nancy would benefit from a limited conservatorship in RCF because it "facilitated socialization with her peers"[12]. She idealized the notion of being segregated with other retarded people, saying that it was good for people to socialize with their peers (defined as DD), objecting to the idea

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[10] Street was seen in the hallway during breaks openly intimidating petitioner's witnesses, such as Drs. Morgan and Cerezo, after which Morgan tried to disparage the Golins but his statements broke down on cross examination. Martin refused to order this stopped and cites Morgan's disparaging remarks (App, *infra*, 22a).

[11] The parents moved 90 miles to Merced County in July 2002 to leave SARC territory and avoid continued police harassment.

[12] Ironically, young Ms. Mulhoe opined from SARC records that it was *Mrs. Golin, not SARC*, who had refused desperately-sought services that could have benefited Nancy when she was younger.

that Nancy could "socialize with lawyers and judges". The parents' unique understanding of Nancy's emotions, wishes and idiosyncrasies from their lifelong observations of her posture, expressions, gesture and behavior told them she hated to be segregated from the community in the company of retarded persons in state programs. It made her feel inferior, categorized and discriminated.

Martin's Statement of Opinion (App., *infra*, 14a-21a) at first seems overwhelmingly condemning to the parents, but on closer examination can be seen to entirely lack substance, and he brushes aside any of the evidence of state abuse. He merely recites the state's inflammatory contention that there existed some "*history of abuse and neglect*" without referring to a single reasonable inference. There was never any parental discord at all when it came to Nancy's care, the parents were always united on this subject. Nor "substandard care"; on the contrary. (App., *infra*, 22a) Martin's "clear and convincing" standard cannot be justified. Martin neglects the fact the state utterly failed in its burden to show any of these findings, and there is none in the record. His principal findings relied entirely on now-excludable testamentary hearsay evidence allowed by the business records hearsay exception (see e.g. Bason-Mitchell App, *infra*, 22a-23a) to trump live testimony. Martin kept out evidence and testimony of medical error and abuse, then noted in his opinion that there was no such admissible evidence (App., *infra*, 21a-22a).

Martin concluded most outrageously that the doctors that had misguidedly slashed Nancy's Phenobarbital seizure medication at Stanford Hospital the week she was taken, without the benefit of any medical history, throwing her into a week of seizures until a neurology consult was called to restore her long prescribed dosages (*infra*, 5-6) – *they* were in fact the ones that were correct in their estimation of Nancy's medication levels as found in non-confrontable hearsay testamentary evidence (App, infra, 24a), *not* Nancy's permanent board certified neurologists, or Stanford's own neurology consult. This is an unreasonable inference given the resulting seizures, the only at-

tempt to justify any finding of abuse, claiming that Nancy's mother had been overdosing her daughter. Martin then proceeded from this faulty finding that Mrs. Golin's special knowledge of her daughter was "misinformed" [by medical experts] to conjure a host of other increasingly fanciful findings, such as "*educate themselves on various medical topics from the internet*" ("*informed* consent"?) "*dangerous non-compliance with physicians' directions as to medication*" (none) "*the Golins' mistaken overconfidence in their limited medical knowledge*" (confirmed by expert witnesses), "*willingness to shop around for a physician who will accommodate their demands rather than confront them*"(she had only two neurologists in ten years) '*Mr. Golin's agreement with or acquiescence to Mrs. Golin's misinformed medical decisions*" (Mrs. Golin made no medical "decisions" misinformed or otherwise), or "*inability to get along with most professionals*" (never with actual professionals), and absurdly faulting the mother for instances where she was *overcautious* and *overprotective* ("*lofty standards*") (App, *infra*, 24a, 28a) all based on written hearsay records contradicted by live evidence. He also said that Nancy didn't seem aggressive, so the drugs must be working (App, *infra* 13a). Nancy was never aggressive in the first place, as her parents had testified. Martin said Nancy's did not have a dislocated shoulder (App, infra, 20a) or perhaps even a broken collarbone in spite of x-rays showing them plainly apparent even to the untrained eye and expert testimony.

Her parents testified that Nancy had suffered a burn injury in 1995, a tragic event they could not have foreseen, caused by a dress made of a now-banned highly flammable fabric. The unsuspecting parents *were* closely monitoring her contrary to Martin's presumption (App, *infra*, 28a)[13]. Dr. Jerold Kaplan, a respected expert witness in orthope-

[13] The DA's office twice dropped prior investigations, finding this *was* an accident. No one prior to the end of the trial when the State felt pressed, not even Street or the DA, had ever contended this was more than a terrifying accident or blamed the distraught parents.

dics and abuse who attended Nancy and admired their relationship with her, testified against any claim of abuse or neglect. No other accidents occurred since 1995.

Martin denied the parents' petition in favor of the State's for six requested powers of conservatorship over that of the parents, "*without conditions or limitation*" (App, *infra*, 26a) and for an indefinite period (App, *infra*, 13a). These powers prevent any future opposition to SARC abuse. A perfunctory one-year review required by Cal. Prob. C. §1850 in 2004 was never held.

H. Succeeding Petitions For Appeal

The parents filed for a new trial with affidavits listing extensive abuses of discretion, citing admitted evidence, errors at law, and irregularities at trial, a change of the trial opinion based on findings not supported by the evidence, judgment not supported by the findings. Martin denied it in January 2004[14].

Citing urgency and the lack of a "plain, speedy or effective remedy", petitioners filed a timely petition for a writ of mandate and prohibition against Santa Clara County Superior Court (Probate) in the State Court of Appeals Sixth District, which denied it without comment on January 6, 2004 (App., *infra*, 4a), and then sought a review of its denial in the California Supreme Court, which then denied a grant of review on February 24, 2004 (App, *infra*, 3a).

In December 2003, the parents filed a notice of appeal from the conservatorship orders in the State Court of Appeals for the Sixth District. That appeal is active but is in jeopardy due to the absence of a trial record. The parents filed and were granted leave to proceed *in forma pauperis* by the Court of Appeals. They then moved the court below to provide transcripts citing this Court's equal protection analysis of *M.L.B. v S.L.J.*, 519 U.S. 102 (1996). That re-

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[14] The State at that hearing said that Nancy now has an undisclosed life threatening condition justifying *their* continuing custody; Martin thus ordered that State conservatorship orders be imposed during the pendency of the appeal contravening parents' cited *Gold v. Superior Court of Marin County*, 90 Cal.Rptr.161 (1970).

quest was twice denied by the State sixth District Court of Appeals without comment, contravening this Court's holding[15]. That court already twice dismissed and vacated dismissal of the appeal for failure to procure the record.

Judge Martin on April 1, 2004 denied the parents settled statement election, justified by their *in forma pauperis* standing. He said *now* that he thought that the parents *could* afford to pay for transcripts, even though during the trial he opined that the parents appeared to lack the financial ability to care for their daughter (App, *infra*, 15a). The appellate court followed suit and directed the parents to elect to proceed either with or without transcripts threatening dismissal for failing to procure transcripts they had already shown they could not afford (App, *infra*, 2a). The State Supreme Court denied parents' petition for review without comment April 28, 2004 (App, *infra*, 1a).

I. Current Status of Nancy Golin

It is mental cruelty to Nancy to be separated from her parents. Nancy is always delighted to see her parents come and depressed to see them leave. Her security and innocent trust are battered when her parents appear, seeming indifferent to her plight by not responding to her desperate efforts to be taken home. This creates the appearance in her immature mind of rejection and collaboration of her parents in dumping her in State custody. SARC thus forces the parents to become accomplices in SARC's emotional abuse of Nancy.

SARC has done its most to sever family ties, barring parents at birthdays, Christmas, Thanksgiving, Easter, Halloween and family outings. Visits have been terminated for many months at SARC's whim. Martin approved SARC-requested authority to impose supervised visitation[16] (Id, *infra*, 30a). SARC will not approve any

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[15] The parents analogized *Conservatorship of Roulet*, 23 Cal.3d 219 (1979) showing Nancy had the same rights to a free transcript on appeal as an indigent criminal defendant, as both face a deprivation of their liberty.

[16] A search of cases and statutes found no authority for a court to im-

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neutral supervisor. SARC limits parents to one 4hrs/wk scheduled visit at Nancy's RCF only. The parents can walk outside with her for 2hrs/wk. only with a chaperone, but may not take her home. SARC agitates to further limit or terminate visits. The parents have not seen their daughter without supervision for three years and no end is in sight. The parents' innocence does not matter. Neither the court nor SARC seriously attempt to justify these restrictions (App., *supra*, 30a-31a). In truth, pretending the parents are dangerous is retaliation for opposing SARC.

SARC is rapidly destroying Nancy. Her parents fear further delay. She is suffering from tardive dyskinesia from drugging (tremors, involuntary lip and tongue movements, head contracted towards shoulder, and muscle rigidity). Her hand often shakes from tremors due to the long term off-label use of psychotropics that she is often unable to feed herself without someone guiding her hands. The parents cannot have other doctors see her or obtain records from her caregivers. She still has seizures, but to maintain the pretense the parents negligently failed to control them[17], seizures are well concealed. Her care is still being supervised by SARC GP Masada, who improperly resumed Zyprexa resulting in her being hospitalized in serious condition in 2003 and lied about her condition.

She is now bent over like an old woman and has imminent tooth loss from 20% bone loss due to osteoporosis due to the resumption of Dilantin for anti-seizure medication in November 2001 that the Golins warned against[18]. Where she used to appear completely normal in public and be able to run and hike all day and feed herself she is suf-

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pose visitation restrictions between consenting adult family members, and we contend there is none. The only authority is SARC's power to control social contacts (App., *infra*, 12a): SARC's exercise here is unconstitutional under the First Amendment.

[17] All epileptics have occasional breakthrough seizures.

[18] When SARC dentist Santos echoed parents' warnings of imminent tooth loss from Dilantin August 2003, SARC'S neurologist advised switch to Phenobarbital alone, just as Mrs. Golin's neurologist did; SARC's nurse stopped her to avoid vindicating Mrs. Golin.

fering from muscle rigidity from the psychotropic drugging to the extent that she can only walk and move very slowly. Except for caregivers, she mostly sees only retarded people. She still has had no urgently needed dental care for three years. The parents see signs she is still being physically and chemically restrained behind their backs. The parents are unable to protect their daughter in any way and are either lied to or told to mind their own business.

REASONS FOR GRANTING THE PETITION

It is necessary to resolve the important issue of whether caregiving parents retain a constitutional liberty interest in a non-dangerous mentally disabled child after majority. States are in conflict over this fundamental issue. California has violated the due process constitutional rights of petitioners involuntarily removing their adult daughter to state care. It contravened Title II of the American with Disabilities Act (ADA) involuntarily conserving a mentally disabled non-dangerous adult, rejecting Nancy's own family residence as the "least restrictive" environment in favor of a RCF that segregates persons by disability.

I. CALIFORNIA VIOLATED THE CONSTITUTIONAL RIGHTS OF PARENTS IN CARING FOR THEIR DISABLED DAUGHTER AS ESTABLISHED BY THIS COURT

"[T]here is a presumption that fit parents normally act in the best interests of their children," and "so long as the parent adequately cares for his or her children, there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of the parent to make the best decisions concerning the rearing of the parent's children." *Parham v. JR*, 442 U.S. 584, 602 (1979) [19].

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[19] *Parham v. JR*, 442 U.S. 584, 602-603 (1979):" *Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" ...Pierce v. Society of Sisters*, 268 U.S. 510 (1925). See also *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944); *Meyer v. Nebraska*, 262 U.S. 390, 400, 43 S.Ct. 625, 627, 67 L.Ed. 1042 (1923). ... *The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experi-*

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This reasoning, which held a clear preference for family control and custody of minor children, should apply with equal vigor to incapacitated non-dangerous adults who cannot survive safely on their own without the help of willing, caring, capable friends or family.

It is now clear that there is a fundamental right emanating from the Constitution, protecting the integrity of the family unit from unwarranted intrusions by the state. The Supreme Court in *Stanley v. Illinois*, 405 U.S. 645 (1972), commented: "

> *"The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,'* Meyer v. Nebraska, *262 U.S. 390, 399 (1923), 'basic civil rights of man,'* Skinner v. Oklahoma, *316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942), and 'rights far more precious than property rights.'* May v. Anderson, *345 U.S. 528, 533, 73 S.Ct. 840, 843, 97 L.Ed. 1221 (1953). It is cardinal with us that the custody, care and nurture of the child reside first in the parents, ...* Prince v. Massachusetts, *321 U.S. 158, 166 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska, supra, 262 U.S. at 399, 43 S.Ct. at 626, the Equal Protection Clause of the Fourteenth Amendment, Skinner v. Oklahoma, supra, 316 U.S., at 541, 62 S.Ct., at 1113, and the Ninth Amendment.* Griswold v. Connecticut, *381 U.S. 479, 496 (1965)" (405 U.S. at 651)*

A. The Court Below Erred by Depriving Petitioners of Their Family Rights

The court below erred in failing to give the parents any preference with respect to determining Nancy's custody. Here, the State argued and Judge Martin erroneously agreed the constitutional rights of parents to preferential

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ence, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children. 1 W. Blackstone, Commentaries * 447; 2 J. Kent, Commentaries on American Law... *The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition."*

status in caring for their disabled, grown adults are subject to statutory negation, "... Health and Safety Code § 416.9 provides that *'The preferences established in § 1812 of the Probate Code for the appointment of a conservator shall not apply"* (App, *infra*, 11a) [Cal.] Probate Code §1812 establishes that relatives, friends and parents have priority over State Agencies such as DDS, which is intended to be the conservator of last resort in the doctrine of *parens patria.*

The court below scorned this Court's holding that *Parham* established any constitutional family preferences, belittling the holdings of this Court in *Parham* as mere "*dicta*"(App, *infra*, 11a) stating that, "*The selection of the conservator is in the sole discretion of the Court 'guided by what appears to be for the best interests of the proposed conservatee"* (App, *infra*, 11a). Judge Martin expressly brushed off the parents' claim to *Parham* constitutionally protected family preference, saying (*para.*) they should "go down the street to Federal Court... to argue constitutional issues, we don't do that here".

In fact, the court below appears to have applied the opposite presumption, State fitness and institutional bias, ignoring evidence to the contrary, requiring the parents to play David to the State's Goliath. The court chided the parents' belief that their acquired knowledge of their daughter could be superior to that of the State's putative "professionals" (App., *infra*, 24a). Thereafter being alerted to this prerequisite, Judge Martin strained mightily to aid the State in finding some argument that the parents were unfit or dangerous in the face of abundant evidence to the contrary that they had always adequately cared for her, to exonerate the State of any possible injury or liability.

The court below also contravened this Court's holding in *Troxel v. Granville*, 530 U.S. 57 (2000). There this Court objected to the Washington decision below, "*A parent's estimation of the child's best interest is accorded no deference*". *Id.* at 57. In *Troxel* it is also found as here, "*the State lacks a compelling interest in second-guessing a fit parent's decision[s].*" *Id.* at 59. There is no legitimate interest justifying the State's actions here. There remained no

underlying criminal matter. SARC's actual interest proved to be pecuniary and retaliatory rather than promotion of the well being of Nancy Golin.

The question consistent with error reducing procedures is, who of the available parties is best qualified to knowledgeably estimate the child's best interests – in this case, the parents or the State? Who is guided by good motives such as love and concern rather than pecuniary interests? A fledgling psychologist briefly reviewing 20 yr. old SARC hearsay? A powerful white-collar criminal defense law firm representing the group home industry? An uninvited meddling neighbor, or an unhappy, childless troll seeking attention for herself? Childrearing is a hard and demanding job fraught with human frailty and error. There is never any shortage of critics to second-guess errors. When the child has special needs uncommon to normal parenting experience, second-guessing by well-meaning but misguided meddlers leads to heightened error. Like a good judge present over a relatively *short* period to observe is accorded great deference in findings of fact, a caring parent may observe 24 hrs./day, year after year, a living historian of their charge's needs, preferences and eccentricities, guided by love and forgiveness, uniquely putting their needs last against all logical considerations of self.Here, the State went as far as maliciously prosecuting the parents on groundless, trumped up abuse charges that were dropped for lack of merit. It placed their child in dangerous, impersonal and abusive State care, many times worse than any of the unfounded allegations against the parents. The State cannot constitutionally kidnap disabled children taking them hostage as supposed orphans under color of law, to exploit as cash cows for federal money to the state and county.

B. The Court Below Erred Denying Nancy Golin's Right of Protection from Unnecessary Institutionalization per *O'Connor v. Donaldson*

The court below contravened this Court's precedent of *O'Connor v. Donaldson*, 422 U.S. 563 (1975). The facts fit exactly within the parameters of *O'Connor*. Even the so-

called "right to treatment" objections debated by scholars in connection with *O'Connor* do not fit here.

In *O'Connor*, this Court held that

> *"A State cannot constitutionally confine, without more, a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends, and since the jury found, upon ample evidence, that petitioner did so confine respondent, it properly concluded that petitioner had violated respondent's right to liberty". (Id. at. 563).*

Where the sole asserted ground for depriving a person of her liberty is supposedly treatment, but no effective treatment is available, the State errs failing to protect from unnecessary institutionalization. Nancy Golin is non-dangerous and fully capable of "surviving safely in freedom ... with the help of willing and responsible family", as she always had done before.

The Court should recognize two determinative circumstances in the instant case. First, Nancy Golin's condition of atypical autism is presently an untreatable disorder. Secondly, at *her* level of functioning and present age it is dangerously naive to expect habilitation possible with *higher* functioning developmentally disabled persons.

Past attempts to habilitate Nancy in one-on-one settings appropriate for her have already been effectuated to the greatest degree possible by her mother one-on-one, but also were repeatedly denied in State care by SARC unwillingness to spend any money on Nancy's care. The State sells a rosy picture to the local courts of their "professionals'" ability to help DD clients in order to claim generous Federal funding, but when it comes to showing real progress or spending any of their own money, they have proved to be long on promises and short on performance. The financial interest of states in institutional care for adults is overwhelming. The State operates as a business and economic self-interest has always trumped best intentions. California alone spends $6 billion a year on adult care, creating a huge business on the scale of the largest corporations in the world. Every potential admission into the system represents hundreds of thousands of

the system represents hundreds of thousands of dollars to the administrators. The incentive to remove adult children from homes to institutionalize them or force compliance with revenue-making "services" is financially the same as that of a corporation in seeking new customers.

In reality, the State does not provide the necessary medical and dental "treatment" and habilitation that the family provides. "Treatment" in the state means medical and dental neglect, inappropriate psychotropic drugging for caregiver convenience turning their clients into zombies in dangerous and impersonal environments truly turning them into "*mere creature[s] of the state*" (*Parham, supra*, at 603). At her present care home, although there are other people present, in fact there is only one low-skilled care-worker watching her and three other clients, whereas at home she had two skilled parents caring for her full time.

After seizing her from her family objecting that the parents had refused to place her in failed SARC programs, the State *itself* did not place Nancy in a program for over a year until it was discovered and they were embarrassed into doing so, or fund communication devices requested by her teachers. When SARC finally found a program it mainly involved Nancy being warehoused, confined to a sofa watching TV or shredding paper most of the day. She made no improvement in her day program while the State strained to claim childhood-acquired abilities as new progress.

In her mother's high standards of caregiving, Nancy could not be "HMO'd" into indifferent care as she is today. The best treatment for Nancy is integration and exposure in the community with an intact family unit, where she can benefit from normal role models in a loving, positive climate that nurtures self-esteem, affords rich experiences and activities, and does not condone administration of injurious, indifferent drugging.

There was no compelling state interest to conserve Nancy as a merely dependent adult living happily and safely in her family. As an outgrowth of *O'Connor, supra*, State laws mandating that persons who are developmen-

tally disabled and living safely with their families do not normally need to be conserved, merely because they are developmentally disabled, see e.g., *Conservatorship of Early*, 35 Cal.3d 244 (1983).

Here the State sought to circumvent federal constitutional protections against unnecessary institutionalization of *O'Connor* petitioning the superior court under Cal. Health & Safety Code §416 et seq, Conservatorship of the Director, pitted against the parents petition under the Probate Code. The superior court ignored vital due process safeguards in State law inspired by *O'Connor*, embodied in Cal. Health and Safety Code §416.23[20] objected to in parents' motion for nonsuit, shown in the legislative intent analyzed in *Bellino v. Superior Court of Riverside County*, 137 Cal.Rptr.523 (1977)[21] barring State intrusion except where the child is abandoned by his parents and the proposed conservatee cannot live safely in the care of willing family or friends as required by *O'Connor*.

C. The Court Below Erred Denying the Parents' Constitutional Right to Care and Upbringing of Their Child per *Pierce v. Society of Sisters*

Lying at the root of their hidden agenda is SARC's motive to defend their regional monopoly, making an example of any parent that defies their authority removing their DD child from SARC programs. Despite the fact that Nancy is now an adult, SARC continued to demand placement in Regional Center boondoggles the parents found to be inappropriate or harmful in Nancy's *individual* case. Because Nancy is an incompetent adult living with caring

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[20] Cal. Health and Safety Code §416.23: 'This article does not authorize the care, treatment, or supervision or any control over any developmentally disabled person without the written consent of his parent or guardian or conservator.'

[21] *Bellino v. Superior Court of Riverside County*, 137 Cal.Rptr.523, (1977) : (analyzing the legislative intent of §416 et seq) *"...the statutes were designed to respond to the 'poignant and challenging question of the parent: "what will happen to my retarded child when I am no longer able to care for him?'"* (*"Legal Planning for the Mentally Retarded: The California Experience"*, Herma Hill Kay, et al, 60 Cal. L.Rev. 438, 510)

parents, the reasoning of *Parham* must apply with equal vigor to her[19].

The record showed that SARC started conspiring to seek state conservatorship of Nancy in 1993, right after the parents removed Nancy from her last day program (*infra*, 5), as a means of forcing their services on the family. It was piqued again when in 1997 her mother threatened to report SARC for fraud for claiming Nancy as a client for federal funding when they had not provided services for years. SARC manager Kinderlehrer testified in trial that when parents remove a child from regional center program, SARC agents "feel a concern" and report it to APS/CPS, charging parents refusing regional center services they find unbeneficial to be unfit.

This falls squarely within the deliberations of *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 U.S. (1925), in which it was held that fit parents have a constitutionally protected liberty interest in the direction of the upbringing and care of their children in making educational choices for their children. Here SARC's pecuniary interest motivates it to force caring, concerned parents to accept inferior services that they deem ineffective or harmful in preference to the parents' own habilitation programs or activities. The State affords no alternative to SARC services; thus there is no competitive balance in this marketplace.

II. THE COURT BELOW ERRED BY ACCORDING NO DEFERENCE TO NANCY GOLIN'S PREFERENCES

More critical even than the family rights of the parents are Nancy Golin liberty rights. While she is no longer a minor, at her mental age she retains emotional aspects of childhood wishing to live with her natural parents as she has always done before, to recover from State injuries. Her desperate requests to go home with her parents are ignored. In custody battles between parents, a minor child's preference has great weight. Here the parents are united, yet none is given.

In *Santosky v. Kramer*, 455 U.S. 745 (1982), this Court

held, "*the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.*" (Id. at 760) This consideration should receive heightened attention after the age of maturity, when an incapacitated adult child bonded for a lifetime is invested with all her civil liberties. This Court in *Santosky* held, "*At the factfinding, the State cannot presume that a child and his parents are adversaries. After the State has established parental unfitness at that initial proceeding, the court may assume at the dispositional stage that the interests of the child and the natural parents do diverge*" (Id. at 760). But here the court below did presume that the parents and their daughter were adversaries, by appointing a lawyer hostile to the family to represent Nancy. The court below thus proved itself prealigned with the State barring the Golins and Nancy from a fair proceeding. The parents dismissal of neglect charges should have resolved any findings of supposed neglect or abuse, and the probate trial as conducted constituted double jeopardy, abrogating *res judicata,* on the issue of parental fitness.

III. THE COURT BELOW VIOLATED THE INTEGRATION MANDATE OF THE AMERICANS WITH DISABILITIES ACT (ADA) NOT CONSIDERING A FAMILY HOME LEAST RESTRICTIVE

California violated the right of handicapped Nancy Golin, under Title II of the ADA, 42 U.S.C. §12132, that services "*should be provided in the setting that is least restrictive of the person's personal liberty.*" In accord with the regulatory power that Congress bestowed, the Attorney General adopted the integration mandate, which requires public entities to administer services "*in the most integrated setting appropriate to the needs of qualified individuals with disabilities.*" 28 C.F.R. § 35.130(d). The preamble to the United States Attorney General's ADA Title II regulations defines that language to mean " 'a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.' " 28 C.F.R. Pt. 35, App. A, p. 450 (1998) (cited by *Olmstead, supra,* 527 U.S. at p. 592). "*The ADA appears to provide a mecha-*

nism to end the separation of individuals with mental disabilities from society."[22]

Compare that with Judge Martin's reasoning in the opinion of the court below in the instant case (App., *infra*, 31a) "*Within reason*, Nancy Golin should *occasionally* be exposed to persons and circumstances in addition to day programs, residential care facilities, and her 'peers'" (emph. added). This is far from ADA's "*fullest extent possible*", achieved when Nancy is living at home and in the community. The hidden agenda expressed by the court below approves warehousing of retarded people away from the disturbed eye of the public[23].

IV. NANCY GOLIN'S FAMILY RIGHT TO CONTINUING PROTECTION BY HER PARENTS MUST BE CONSTITUTIONALLY PROTECTED AS A RESULT OF *WHITMORE V. ARKANSAS*

Nancy Golin's right to continuing protection by her family is paramount here. Courts have consistently held when conservatees reach majority they are theoretically emancipated; thus, non-conserving parents lose standing to protect their rights. With the State as conservator and a State-aligned attorney appointed representative, she permanently loses all her rights to protection by her family; the State sees few practical bars to abusing her constitutional rights. The same people who injured her and violated her basic civil and constitutional rights monopolize the right to represent her, blocking all her legal remedies and immunizing themselves from a feared liability and civil rights lawsuit by making her a legalized hostage.

We here contend that the same constitutionally pro-

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[22] *"'In the Most Appropriate Setting': The Rights of the Mentally Disabled Individuals Under the Americans with Disabilities Act in the Wake of Olmstead v. L.C.,"* Neil S. Butler, 49 Cath. U.L. Rev. 1021, 1035 (2000)

[23] *O'Connor v. Donaldson*, 422 U.S. 563 (1975), "*May the State fence in the harmless mentally ill solely to save its citizens from exposure to those whose ways are different? One might as well ask if the State, to avoid public unease, could incarcerate all who are physically unattractive or socially eccentric. Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty*" (Id. at 575).

tected family rights of *children* to enjoy the protection and nurturing of their families from unconstitutional abuse must be extended to *mentally handicapped adults*. We argue this parental role must be constitutionally protected, deriving from the common law doctrine of "next friend".

This Court in *Whitmore v. Arkansas*, 495 U.S. 149 (1990), held a three-prong test to next friend qualification applicable to caring parents. First, one who is a prisoner of the State as an incompetent adult has an "*adequate explanation as to why [she] cannot appear on her own behalf*" (*Id.* at 163-4). Second, devoted parents uniquely qualified as lifelong caregivers are ordinarily "*truly dedicated to the best interests of the person on whose behalf he seeks to litigate*" (*Id.* at 163). Thirdly, parents have a "*significant relationship with the real party in interest.*"

The constitutional rights of association and freedom from unreasonable personal seizure may thus be easily violated by the State. If the State is the only party permitted to protect Nancy's rights, then who can protect Nancy from the State? This Court's guarantees of her constitutional right to refuse anti-psychotic medication in *Washington v. Harper*, 494 U.S. 210 (1990), rights that are available even to those who unlike Nancy *have* been diagnosed with mental illness[24], and her right to protection in State custody in *Youngberg v Romeo* 457 US 307 (1982), are empty promises without her intertwined right to protection by her family being also constitutionally protected.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

_____, _____

Jeffrey R. Golin Elsie Y. Golin

Dated, November 24, 2004

13736 De Leon Ave., Santa Nella, CA 95322

[24] See also "*The Right to 'Just Say No': A History and Analysis of the Right to Refuse Antipsychotic Drugs*", Dennis E. Cichon, 53 LALR 283 (Louisiana Law Review) (1992).

APPENDIX

Page	Attachment
1a	April 28, 2004: California Supreme Court denial of a Petition for Review and Stay of Sixth District Court of Appeals denial of Motion for Transcripts on Appeal (S124153)
2a	April 9, 2004: California 9th District Court of Appeals Order Reversing Proceeding by Settled Statement, Ordering to Proceed by [previously denied] Transcripts, (H026861)
3a	February 24, 2004: California Supreme Court denial of Petition for Review of Sixth District Court of Appeals denial of writ of mandate and prohibition for conservatorship proceeding. (S122012)
4a	January 6, 2004: California Court of Appeals for Sixth District denial of writ of mandate and prohibition for immediate review of decision of trial court granting conservatorship to State. (H0126829)
5a	November 10, 2003: Orders of the Superior Court of Santa Clara County granting conservatorship of Nancy K. Golin enumerating six powers to be removed and granted to the California DDS for an indefinite period. (1-02-PR-151096)
14a	October 22, 2003: Statement of Opinion of Santa Clara County Superior Court Probate Div. in support of judgment granting limited conservatorship of Nancy Golin to State of California DDS denying competing petition of parents. 1-02-PR-151096)

Court of Appeal, Sixth Appellate District – No.H026861
S124153

IN THE SUPREME COURT OF CALIFORNIA
En Banc

DEPARTMENT OF DEVELOPMENTAL SERVICES,
Petitioner and Respondent
v.
JEFFREY GOLIN et al, Objectors and Appellants

Application for stay and petition for review DENIED.

SUPREME COURT
FILED
APR 28 2004
Frederick K. Ohlrich Clerk

DEPUTY

Werdegar, J., was absent and did not participate

S/GEORGE

Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

FILED
DISTRICT COURT OF APPEALS
APR-9 2004
MICHAEL J. YERLY, CLERK
DEP S/_____

DEPARTMENT OF DEVELOPMENTAL SERVICES,
Petitioner and Respondent,
v.
JEFFREY GOLIN, et al,
Objectors and Appellants

No., H026861
(Super. Ct. No. PR151096)
Santa Clara County

BY THE COURT:

Appellants request for extension of time and request for continuance is denied. The trial court having denied appellants' motion to proceed by way of settled statement in lieu of reporter's transcripts, appellants are directed to file their motion designating reporter's transcript or notice of intent to proceed without reporter's transcript with the trial court within 10 days from the date of this order.

DATED APR 9 –2004 S/ (Conrad Rushing) P.J.

Court of Appeal, Sixth Appellate District – No.H026829
S122012

IN THE SUPREME COURT OF CALIFORNIA
En Banc

JEFFREY R. GOLIN, et al., Petitioners,

v.

THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondents

DEPARTMENT OF DEVELOPMENTAL SERVICES, et al, Real Parties in Interest

---

Petition for Review **DENIED**

SUPREME COURT
FILED
FEB 14 2004
Frederich K. Ohlrich Clerk
S/ (JEN)
DEPUTY

S/ GEORGE
Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

JEFFREY R. GOLIN, et al, Petitioners, v. THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent; DEPARTMENT OF DEVELOPMENTAL SERVICES, et al., Real Parties in Interest	No. H026829 (Santa Clara County Super. Ct. No. PR-151096 FILED JAN 6 – 2004 Court of Appeal – Sixth App. Dist. BY_____ DEPUTY

BY THE COURT:

The petitions for writs of mandate and prohibition are denied.

(Rushing, P.J., Premo, J., and Elia, J., participated in this decision.)

Dated JAN 6 – 2004 S/ RUSHING, P.J.

Attorney or Party Without Attorney: H. Dean Stiles State of Calif., Office of Legal Affairs Department of Developmental Services P. O. Box 944202, MS 2-14 Sacramento, CA 94244-2020 *Telephone No.*: (916) 654-3234 *Attorney for*: Petitioner	[ENDORSED] FILED 03 NOV 10 AM 7:46 KIRI TORRE CHIEF EXEC OFFICER OF/CLERK SUPERIOR COURT OF CA COUNTY OF SANTA CLARA BY_____DEPUTY
SUPERIOR COURT OF CALIFORNIA, *COUNTY OF SANTA CLARA* *STREET ADDRESS*: 191 N. First St. *CITY AND ZIP CODE*: San Jose, CA 95113	
CONSERVATORSHIP OF THE: (checked) *PERSON...* *OF* Nancy Golin *CONSERVATEE*	
ORDER APPOINTING PROBATE CONSERVATOR (checked) Limited Conservatorship	*CASE NUMBER*: 1-02-PR-151096
WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE BEEN ISSUED	

1. *The petition for appointment of conservator came on for hearing as follows (check boxes c,d,e, and f to indicate personal presence):*
    a. *Judge*: William F. Martin
    b. *Hearing Date*: September 29, 2003 *Time* 9:00am *Dept*: 15
    c. *Petitioner*: Director of Department of Developmental Services
    d. *(checked) Attorney for Petitioner*: H. Dean Stiles

e. *(checked) Attorney for person cited*: Malorie Street, 120 West Mission St., San Jose, CA 95110 PH. (408) 299-7194

f. *Person was*: (checked) *present*

THE COURT FINDS

2. *All notices required by law have been given*
3. *Name*: N/A
    a. (unchecked) is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter
    b. (unchecked) is substantially unable to manage his or her financial resources or resist fraud due to undue influence.
    c. (unchecked) has voluntarily requested appointment of a conservator and good cause has been found for the appointment.
4. *Conservatee*:
    a. (checked) is an adult
    b. (unchecked) [will be an adult on the effective date of this order].
    c. (unchecked) [is a married minor]
    d. (unchecked) [is a minor whose marriage has been dissolved]
5. (checked) *There is no form of medical treatment for which the conservatee has the capacity to give an informed consent*, NOTE: SEE ATTACHMENTS. (unchecked) [*Conservatee is an adherent of a religion defined in Probate Code section 2355(b).]*
6. (unchecked) [*Granting the conservator powers to be exercised independently under Probate Code section 2590 is to the advantage and benefit and in the best interest of the conservatorship estate.*]
7. (checked*) Conservatee is not capable of completing an affidavit of voter registration*
8. *(unchecked) [Conservatee has dementia as defined in Probate Code section 2356.5 and the court finds all other facts required to make the orders specified in item 25].*
9. *(checked) Attorney (name):* Malorie Street *has been*

appointed counsel by the court as legal counsel to represent the conservatee in these proceedings. The cost for representation is: $ (blank) The conservatee has the ability to pay for: (unchecked) all, (checked) none, (unchecked) a portion of this sum (specify): $ (blank)

10. *(checked) Conservatee need not attend the hearing.*
11. *(unchecked) The appointed court investigator is:* Cynthia Terra
12. *(checked) (for limited conservatorships only) The limited conservatee is developmentally disabled as defined in Probate Code section 1420.*

(Page 2 of the form order starts here)

CONSERVATORSHIP OF (Name): Nancy Golin, *Conservatee*	*Case Number:* *1-02-PR-151096*

13. *(unchecked) The conservator is a private professional conservator as defined in Probate Code section 2341 who has filed with the county clerk the confidential statement required by Probate Code 2342*
14. *(Either a, b, or c must be checked):*
    a. *(checked) The conservator is not the spouse of the conservatee.*
    b. *(unchecked) The conservator is the spouse of the conservatee and not a party to the action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.*
    c. *(unchecked) The conservator is the spouse of the conservatee and is a party to the action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage. It is in the best interests of the conservatee to appoint the spouse as conservator.*

THE COURT ORDERS;

15. a. *(Name) Director, Department of Developmental Services*
    (Address): 1600 Ninth Street, Room 240, Sacramento, CA 95814, (Telephone): (916) 654-3476
    is appointed (unchecked) conservator, (checked) limited conservator: of the PERSON of (name) Nancy Golin
    b. *(Name): (blank)*
    (Address): (blank) *Telephone: (blank)*
    is appointed: (unchecked) conservator, (unchecked) limited conservator of the ESTATE of (name) (blank)
    and letters of conservatorship shall issue upon qualification
16. *(unchecked) Conservatee need not attend the hearing*

17. a. *(checked) Bond is not required*
    b. *(unchecked) [Bond is fixed at $ (blank) to be furnished by an authorized surety company or as otherwise provided by law]*
    c. *(unchecked) Deposits of $ (blank) are ordered to be placed in a blocked account at (specify institution and location): (blank) and receipts shall be filed No withdrawals shall be made without a court order (unchecked) Attachment orders in Attachment 17c*
    d. *(unchecked) The conservator is not authorized to take possession of money or any other property without a specific court order.*
18. *(unchecked) For legal services rendered, (unchecked) conservatee, (unchecked) conservatee's estate, (unchecked) parents of the minor, (unchecked) minor's estate shall pay to (name) (blank) the sum of $ (blank) (unchecked) forthwith, (unchecked) as specified in Attachment 18, (unchecked) as follows (specify terms, including any combination of payors): (blank)*
19. *(checked) Conservatee is disqualified from voting*
20. *(checked) Conservatee lacks the capacity to give informed consent for medical treatment and the conservator of the person is granted the powers as defined in Probate Code section 2355. (unchecked) The treatment shall be performed by an accredited practitioner of a religion as defined in Probate Code section 2355(b).* NOTE SEE ATTACHMENTS 28-31 No. 4.
21. *(unchecked) The conservator of the estate is granted authorization under Probate Code section 2590 to exercise independently the powers specified in Attachment 21 (unchecked) subject to the conditions provided.*
22. *(unchecked) Orders relating to the capacity of the conservatee under Probate Code section 1873 or 1901 as specified in Attachment 22 are granted.* NOTE: SEE ATTACHMENTS 28-30, No 3..

23. *(unchecked) Orders relating to the powers and duties of the conservator of the person under Probate Code sections 2351-2358* as specified in Attachment 23 are granted: (Do not include orders under Probate Code section 2356.5 relating to dementia)
24. *(unchecked) Orders relating to the conditions imposed under Probate Code section 2402 upon the conservator of the estate are specified in Attachment 24 are granted.*
25. a. (unchecked) he conservator of the person is granted authority to place conservatee n a care of nursing facility described in Probate Code section 2356.5(b).
    b. (unchecked) The conservator of the person is granted authority to authorize the administration of medications appropriate for the care and treatment of dementia as described in Probate Code section 23

(continued to page 3 of form-----→)

(Page 3 of form starts here)

CONSERVATORSHIP OF (Name): Nancy Golin, *Conservatee*	*Case Number:* *1-02-PR-151096*

26. (unchecked) *Other Orders as specified in Attachment 26 are granted*
27. (unchecked) *The probate referee appointed is (name and address) (blank)*
28. (checked) *(For limited conservatorship only) Orders relating to the limited powers and duties of the limited conservator of the person under Probate Code section 2351.5 as specified in Attachment 28 are granted.*
29. (unchecked) *(For limited conservatorship only) Orders relating to the limited powers and duties of the limited conservator of the estate under Probate Code section 1830(b) as specified in Attachment 29 are granted.*
30. (checked) *(For limited conservatorship only) Orders limiting the civil and legal rights of the limited conservator as specified in Attachment 30 are granted.*
31. *(checked) This order is effective on the (checked) date signed, (unchecked) date minor attains majority (specify) (blank)*
32. *Number of boxes checked in Items 15-31*: 7
33. *Number of pages attached*: 2

Date: Nov 07 2003

s/ WILLIAM F. MARTIN
(JUDGE OF THE SUPERIOR COURT)
(checked) SIGNATURE FOLLOWS LAST ATTACHMENT

Page 3 of 3

ORDER APPOINTING PROBATE CONSERVATOR
(Probate Conservatorship)

Limited Conservatorship of the Person of:
NANCY GOLIN

Case Number:
1-02-PR-151096

ATTACHMENT 28

Powers and duties of the limited conservator of the person pursuant to Probate Code section 2351.5 are granted as follows:

1. Full powers to fix the residence of specific dwelling of the limited conservator.
2. Full power to consent, refuse consent, or otherwise control access to the confidential records and papers of the limited conservatee;
3. Full powers to control the limited conservatee's right to contract;
4. Exclusive authority to give or withhold consent for and to require the limited conservator to receive medical treatment, in accordance with section 2355 of the Probate Code;
5. Full powers to control the limited conservator's social and sexual contracts and relationships; and
6. Full powers to make all decisions concerning the habilitation and education of the limited conservatee.

ORDER APPOINTING LIMITED CONSERVATOR (ATTACHMENT 28)

Limited Conservatorship of the Person of:
NANCY GOLIN

Case Number:
1-02-PR-151096

ATTACHMENT 30

IT IS HEREBY ORDERED: that the civil and legal rights of the Limited Conservator herein shall be suspended for an indefinite period of time as set forth below:

1. Power to fix the residence or specific dwelling of the limited conservatee;
2. Power to consent, refuse consent or otherwise control access to the confidential records and papers of the limited conservatee;
3. Powers of the limited conservatee to contract;
4. Power to give or withhold consent for medical treatment;
5. Power to control the limited conservatee's social and sexual contacts and relationships, and
6. power to make decisions concerning the habilitation and education of the limited conservatee.

Dated: Nov 07 2003

s/WILLIAM F. MARTIN

JUDGE OF THE
SANTA CLARA COUNTY SUPERIOR COURT

ORDER APPOINTING LIMITED CONSERVATOR (ATTACHMENT 30)

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

In re the Conservatorship of Nancy K. Golin State of California, Department of Developmental Services, Petitioner, And Jeffrey and Elsie Golin, Georgianna Lamb, Respondents and Cross Petitioners	Case No.: 1-02-PR-151096 STATEMENT OF DECISION (ENDORSED) F I 'L E D OCT 22 2003 KIRI TORRE Chief Executive Officer /Clerk Superior County of Santa Clara BY RENEE ROGERS, .DEPUTY

This matter was assigned to the Honorable William F. Martin, presiding in Department 15 of the Superior Court, for trial to begin on September 29, 2003. H. Dean Stiles appeared representing the Department of Developmental Services of the State of California (DDS), Nancy Johnson appeared representing the San Andreas Regional Center (SARC), Malorie Street, Deputy Public Defender, appeared representing the Conservatee, Nancy Golin, Kristin Baker, Deputy County Counsel, appeared occasionally, not as a party, but to represent the interests of the Santa Clara County Adult Protective Services Agency (APS) and its employees and records. Jeffrey and Elsie Golin and Georgianna Lamb, Respondents, all appeared *in propria persona* representing themselves.

The Court first heard and ruled on a number of *in limine* motions including a CCP 170.6 challenge to this Court. After much discussion regarding whether Mr. and Mrs. Golin had already used a CCP § 170.6 challenge against Judge Thomas Edwards when they also chal-

lenged him for cause pursuant to CCP § 170.1, the Golins withdrew their challenge and the Court moved on to the other *in limine* motions, including motions to disqualify Nancy Johnson and to disqualify Malorie Street for various reasons. (Mrs. Golin filed a new CCP 170.6 challenge against this Court on 10/20/03 after the case was argued and submitted. It is DENIED as untimely. It was filed after the commencement of the hearing and after the opening statement of counsel. Notably, it contains factually inaccurate statements.) The motion to disqualify Nancy Johnson, counsel for SARC, was denied. The Court did place limits on the examination of witnesses and the argument of counsel to the extent there is a community of interest between the DDS and SARC. The motion to disqualify the Public Defender, Malorie Street, was also denied. Pursuant to Probate Code § 1471(a), the Office of the Public Defender was appointed to represent the Conservatee, Nancy Golin, in this matter. The Court finds as to both Ms. Johnson and Ms. Street that they have acted professionally, ethically, and in the best interests of their respective clients. The Court finds no evidence of personal animus or bias against Mr. and Mrs. Golin. Counsel's advocacy of positions contrary to those of Mr. and Mrs. Golin does not support the extraordinary allegations made by Mr. and Mrs. Golin against both Ms. Johnson and Ms. Street. The written papers submitted to the Court during trial and pretrial, as well as the repeated arguments of both Mr. and Mrs. Golin, demonstrate a worldview of deep distrust and suspicion of authority, especially governmental authority. Notably, Mr. and Mrs. Golin also vigorously complain about the judgment, actions, and fairness of the Court's Probate Investigators, prior Judges assigned to their matters -indeed all the judges of this county ("kangaroo court" referring to the dependency court, "like political prisoners in a banana republic" - Mrs. Golin), various police departments (including the Palo Alto Police Department), various physicians and health care entities (including the Stanford Medical Center and its staff), SARC, APS, the District Attorney's Office, Santa Clara

County Counsel, the State Department of Developmental Services and various state licensing boards. Mr. and Mrs. Golin are extremely suspicious of the actions of many of the governmental agencies and allege a conspiracy intended to deprive them of their rights and to disadvantage them. Both Mr. and Mrs. Golin accuse Ms. Street of conspiring with the District Attorney's Office to prosecute the Golins on various charges so that some advantage might obtain in this proceeding. The Court notes that the Golins have sought, and are seeking relief in Federal Court from their perceived disadvantages caused by these various governmental entities.

Pursuant to Probate Code (P.C. § 1820 (a) (4)), the State Department of Developmental Services has petitioned this Court to serve as Nancy Golin's permanent, limited conservator (P.C § 1801 (d)). The Office of the Public Defender has been appointed to represent the interests of the proposed conservatee, Nancy Golin (P.C. § 1471(c)). Clear and convincing evidence is required to establish a limited conservatorship for Nancy Golin (P.C. § 1801 (e)). The limited conservatorship shall be granted "only to the extent necessitated" by (Nancy Golin's) "proven mental and adaptive limitations" (P.C. § 1801 (d)). Health and Safety Code § 416.9 provides that "The preferences established in § 1812 of the Probate Code for the appointment of a conservator shall not apply" when the Court is considering the appointment of the Director of the DDS as limited conservator of a developmentally delayed minor or adult person. Mr. and Mrs. Golin contend that dicta in Parham, Commissioner, Department of Human Resources of Georgia v. J.R., Et al. 442 U.S. 584, 602 (1979) creates a presumption that fit parents normally act in the best interests of their children. But even this pronouncement is conditioned on the parents being found fit and continues only so long as the parent adequately cares for his or her children. The Supreme Court notes "As with so many other legal presumptions, experience and reality may rebut what the law accepts as a starting point: the incidence of child neglect and abuse cases attests to this."

Ibid p.602. The selection of the conservator is in the sole discretion of the Court "guided by what appears to be for the best interests of the proposed conservatee" (P.C. § 1812(a)). Trial by jury was explicitly waived by the proposed conservatee, through the Office of the Public Defender (P.C. § 1827). The Court finds that the requirements of P.C. § 1827.5 have been met (Exhibits 1 & 3). The DDS petitions for six of the seven (excepting only the power to control consent to marriage) enumerated powers available to limited conservators in P.C. § 2351.5 (b). The same statute requires the DDS to maximize Nancy Golin's independence and self-reliance (P.C. § 2351.5 (a) (2)). Probate Code § 2355 requires the conservator to make health care decisions "based on the conservator's determination of the conservatee's best interest" considering "the conservatee's personal values to the extent known to the conservator" P.C. § 2355 (a).

The Court finds by clear and convincing evidence that the proposed conservatee, Nancy Golin, lacks the capacity to perform the tasks necessary to provide properly for her own personal needs for physical health, food, clothing, and shelter and to manage her own financial resources. The testimony and report of Dr. Carrie Mohlo supports these findings. Observation of Nancy Golin in court confirms the testimony of Dr. Mohlo in this regard. Nancy Golin appears in court to be about her stated age of 33 years in physical appearance. Yet, she also appears profoundly developmentally delayed. Nancy Golin was observed daily to sit quietly for awhile and then get up and wander about the court room frequently, including to the witness stand and the court reporter's station. Her frequent wanderings in the court room confirm the testimony that she is a "wanderer". Other than an occasional noise, Nancy Golin is mute. She smiles frequently, makes eye contact, and appears happy from her facial expressions in court. Nancy Golin appears alert and does not show evidence of any side effects from any of her medications in court. Specifically, the Court observed no tongue-thrusting, lip-smacking, tremor, shuffling gait, loss of bal-

ance or apparent drowsiness. Although the testimony was that Nancy Golin suffers from a severe seizure disorder, none were observed in the court room. The testimony of her neurologist, Dr. Sarah Gaskins, was that her seizures are under control with her present medication regime of Phenobarbital, Dilantin, and Neurontin. Finally, Nancy Golin did not demonstrate any of the previous misbehaviors described in the testimony. The Court did not observe any pinching, biting, scratching, responding to internal stimuli, anxiety, screaming, fearfulness, or any of the other described problem behaviors. Nancy Golin is presently taking Klonopin for these behaviors and apparently it is working well with no observable side effects. There has essentially been no debate that Nancy Golin requires a limited conservator because of her limitations. Rather the debate has been about who should be Nancy Golin's conservator.

Reasonable efforts have been made to provide for the attendance of the proposed conservatee, Nancy Golin, at the trial (P.C. § 1825 (a)). Nancy Golin has attended all but one day of this protracted trial. (She missed one day due to a scheduling miscommunication.) She usually arrives around 9:30 AM with her caretaker and usually departs within about one hour or less of her arrival. Nancy Golin presently resides at Embee Manor, a residential care facility retained by SARC to provide care for Nancy Golin. Nancy Golin appears clean and well groomed. Her hair appears clean and combed. Her clothes appear clean and unstained. She does not exhibit body odor. The Court has ordered that Nancy Golin be allowed to remain, or depart, as indicated by her wishes. Nancy Golin tends to wander about the courtroom and usually sits quietly in one location for awhile before moving about the courtroom and eventually going to the door, indicating a desire to depart. For her safety and wellbeing, she is accompanied by her caretaker during her journeys.

As mentioned above, this trial has essentially been about who should be Nancy Golin's limited conservator.

The State of California DDS, acting through the SARC and a residential care facility - Embee Manor, petitions this Court to be made that limited conservator on a permanent basis. Georgianna Lamb has withdrawn her petition, but pursuant to a stipulation, desires to remain as an active advocate for Nancy Golin's best interests. Mr. and Mrs. Golin (the Golins) petition the Court to be made Nancy Golin's limited conservators. The DDS, SARC, and the proposed conservatee - - through the Public Defender, all criticize the Golins' abilities to act in Nancy Golin's best interests. The Golins criticize the State's ability to act in Nancy Golin's best interests. Ms. Lamb has offered constructive criticism of perceived problems with Nancy Golin's care under the supervision of SARC and Embee Manor. The evidence submitted by the Golins casting doubt on the State's abilities to act in Nancy Golin's best interest is summarized as follows:

Dr. Gerald Kaplan, a plastic surgeon and head of the Alta Bates Hospital Burn Unit, testified to the presence of a left clavicle fracture found on Nancy Golin's chest x-ray films dated: 8/29/02 (some callus) and 11/7/02 (more callus - healing). He noted that x-ray films dated 9/20/01 revealed no fracture. The obvious conclusion is that sometime between 9/20/01 and 8/29/02, Nancy Golin sustained a fractured left collar-bone. Dr. Kaplan saw no evidence of medical care for the fracture. Mimi Kinderlehrer testified that Nancy Golin was seen by an orthopedist for the fracture. Dr. Duc Nguyen, a board certified orthopedic surgeon, was called as a witness by the Golins and testified that he examined Nancy Golin on 12/02/02 and viewed the same x-rays films as Dr. Kaplan. Dr. Nguyen opined that Nancy Golin suffered a fracture to her left clavicle around May, 2002 or earlier. He was quite clear that he could not tell precisely when the fracture occurred or how it occurred. He also had no opinion as to whether Nancy Golin received medical care for the fracture. Thus there is no evidence as to precisely when this occurred, or more importantly, how it occurred. There was testimony from Mrs. Golin that Nancy Golin was acci-

dent prone. Further, the record is replete with evidence of Nancy Golin's seizure disorder and there is evidence of limitations in the use of her right arm and hand due to orthopedic or other causes, presumably suggesting the use of her good left arm in case of a fall. The Stanford Medical Center records, Exhibit AL, refer to a fall from a wheelchair around 11/24/01 in the psychiatric resident's notes at page 77. Perhaps Nancy Golin fell or had a seizure, which caused the fracture. No one knows. While less likely, the fracture could have happened before 11/15/01.

Dr. Duc Nguyen also testified to a partially dislocated left shoulder appearing in the 11/07/02 x-ray film taken at Alta Bates Medical Center. On cross examination, he clarified that he did not consult with other doctors. Apparently he did not review the emergency room note by **Dr.** Mark Bason-Mitchell, Exhibit 22, who noted: "She had what appeared to be a dislocated shoulder on her chest x-ray; however, clinically she did not appear dislocated in that she had good range of motion, strong pulse and no obvious deformity when palpated. I repeated this shoulder series which suggested that her shoulder is in fact in place." Thus, apparently, Dr. Nguyen was not given all the information needed to fully inform him as to the condition of Nancy Golin's left shoulder. It appears that, after a more thorough examination, her shoulder was not dislocated.

Dr. James Morgan testified that he first treated Nancy Golin on 12/12/01. Ms. Golin's caretaker at the time provided a history of profound mental retardation, and seizure disorder. Notably, he was not given any history of hiatal hernia problems at that time. At some point he detected anemia possibly due to loss of blood. Occult blood had been found in stool specimens. He ordered upper and lower gastro-intestinal studies which occurred 3/19/02 and 4/10/02. The results of both studies were normal. On 8/14/02 Nancy Golin was brought in by her caretaker for examination of an injury to her right middle finger. The fingernail was missing (avulsed), apparently torn off,

possibly by Nancy Golin. Dr. Morgan opined that there was no way to know with certainty how the injury occurred. This was his last examination of Nancy Golin. The Stanford records, Exhibit AL, at page 23, note that on 11115/01 Nancy Golin was admitted with, ` onchyomycosis in the left hand extensively involving the nail bed in all five fingers." Apparently Nancy Golin had fungal infections of the fingernail beds even while in the care of her parents.

Finally, Mr. and Mrs. Golin submit photographs and testimony in which they contend that Nancy Golin suffered a cut over her right eye (Exhibit AH) and had been restrained with ligature marks showing on her ankles (Exhibit AE). Exhibit AE shows swollen ankles, but does not show ligature marks. That interpretation is strained to say the least. Exhibit AH does show a small quarter inch cut in Nancy Golin's upper right eyelid. Again, there is no evidence as to how this small cut was received and, against the background of her seizure disorder and accident history, does not rise to the level of abuse or neglect in the care of the DDS. Mrs. Golin, throughout the trial, argued, suggested, and stated as fact that Nancy Golin suffered esophageal injuries (including a precancerous condition) from the allegedly poor medical care and treatment she received while under the control and care of the DDS. There is absolutely no admissible evidence in the record in this regard however. No medical expert testified to these issues. Dr. Morgan's testimony about esophageal issues was stricken as he did not treat Nancy Golin for these issues and was not declared as a retained expert (he testified as a percipient expert) by the Golins. Mrs. Golin fails to comprehend that she is not a medical expert and her statements in this area, even if otherwise admissible, are separately inadmissible due to her lack of expert qualifications and education.

The DDS, SARC, and the Public Defender criticize Mr. and Mrs. Golin in three major areas: a history of abuse and neglect of their daughter while in their care; a history of substantial domestic conflict between Mr. and Mrs. Golin

which impedes their ability to work collaboratively in Nancy Golin's best interests; and, a history of substantial conflict with professionals, including medical professionals, which results in substandard medical and other care for their daughter.

There is ample evidence in the record of the Golins' conflicts with numerous medical professionals. Dr. Morgan, when questioned by Mrs. Golin, described his interactions with Mr. and Mrs. Golin. He described the Golins as disruptive (he was in the process of treating scheduled patients when the Golins arrived), demanding, and irate. They projected their anger at him and he resented that. Dr. Bason-Mitchell, the emergency room physician at Alta Bates Medical Center, saw Nancy Golin on 11/07/02 when she was brought in by Mr. and Mrs. Golin and Ms. Lamb (in an attempt to have her seen by a neurologist at Alta Bates because of their concerns with Trazodone and Risperdal being given to Nancy Golin at the time). His written description of his interactions with the Golins speaks volumes about their problems in this area and the impact on Nancy Golins medical care. "The mother, father and the friend are all extremely concerned about the patient and the concept of the patient being withdrawn from trazodone and Risperdal. I have done my best, with lengthy conversations, and in nonmedical plain English, to explain to them that there is no acute withdrawal from Risperdal or trazodone. They refused to believe me, so I have also called the patient's primary care physician, Dr. Masada ...he assured me that his interaction with the family has been somewhat concerning, in that he has called the companies that produce these two medications and they feel that there is no acute withdrawal syndrome related to withdrawal of these medications." Dr. Bason-Mitchell even called California Poison Control on this issue in an unavailing attempt to reassure the Golins. "I have done my best with over 15 different conversations with family to confirm for them that there is no danger in withdrawing Trazodone and Risperdal, that I did not plan to admit the patient to the hospital or withdraw these medi-

cations, that their primary care physician, Dr. Masada has asked that they come to his office first thing in the morning; however, the patient's family continues to be agitated, requesting to see a new physician, requesting to be admitted to the hospital, demanding to see a neurologist. I have done my best to allay their concerns, that I feel their daughter is in no acute danger.... however, they continue to aggressively demand that I admit the patient to the hospital. I have had difficulty having calm conversations with them because they continue to interrupt me and not let me finish my sentences. I have done my best to allay their concerns and have assured them again and that I am discharging them from the Emergency Department. They are refusing to leave and has (sic) been asked to leave now by security.... they left angry and frustrated and refused essentially to listen to my discharge instructions;. . . " (Exhibit 22) The Stanford records, Exhibit AL, express concern about the critically high levels of Phenobarbital found in Nancy Golin upon admission on 11/15/01. Dr Chris Hayward's discharge summary notes Mrs. Golin's involvement with this issue:

"Apparently, the mother believed that the doctors did not know how to dose the Phenobarbital for Nancy, and therefore took matters into her own hands." (Exhibit AL, p. 24) The Stanford social worker noted: "(Pt's family has hx of volatile behavior in ER and hospital and have had hx of dealings with security + police due to disruptive behavior at hospital.)" (Exhibit AL, p. 36) Dr. Sarah Gaskins' staff called security on March 10, 2003, after being bothered and scared by the Golins (Exhibit T, p. 2). Mr. and Mrs. Golin called the police and paramedics to Embee Manor several times in March 2003 disrupting the staff and residents (Exhibit T). Mimi Kinderlehrer testified that Embee Manor requested that Nancy Golin be removed from their care several times due to the actions of Mr. and Mrs. Golin. The first request was in December 2002 due to intimidation and aggravation caused by Mr. and Mrs. Golin.

Mr. and Mrs. Golin have each testified multiple times

in various ways that they truly believe that they are more intelligent and more educated than others, including most physicians and other professionals attempting to provide care for Nancy Golin. Mrs. Golin, in particular, belittles physicians and others who do not meet her lofty standards ("smart aleck intern", "scatter-brained" social worker, "so-called experts fresh out of school", "wet behind the ears"). In lieu of medical school, the Golins apparently educate themselves on various medical topics from the internet and package inserts accompanying medications. Armed with this information, they are unafraid to medicate Nancy Golin according to their own beliefs despite physician's orders to the contrary. The medical records indicate that Nancy Golin's seizures were not under control despite Mrs. Golin's belief in "good old Phenobarbital" dosed at critical levels: (normal 15-40) - - 6/15/99: level 44.3 (Exhibit P); 7/14/99: level 52.8 (Exhibit P); 11/15/01: level 53.5 (Exhibit AL). A number of factors have combined to cause a lack of continuity in Nancy Golin's medical care and have exposed Nancy Golin to dangerous non-compliance with physicians' directions as to medication and care for her very serious seizure disorder and other medical problems: a) the Golins' difficult personalities; b) the Golins' mistaken overconfidence in their limited medical knowledge combined with their erroneous belief that they are smarter than others; c) the Golins' willingness to shop around for a physician who will accommodate their demands rather than confront them; d) Mr. Golin's agreement with or acquiescence to Mrs. Golin's misinformed medical decisions.

The Golins' behavior in the court room confirms the evidence of their behavior and problems outside the court room. They were routinely late, delaying the proceedings for a total of close to three hours total over the three week trial. Mr. Golin was cited for contempt for his comments directed at the Court. Mrs. Golin was excluded from the court room one afternoon after repeatedly coaching Mr. Golin, who was on the witness stand, despite numerous

admonitions from the Court. There were routine and repeated interruptions of court proceedings despite advice and warnings to the contrary. Mrs. Golin answered a cell phone in the middle of her husband's testimony, completely disrupting the proceedings for about 20 to 30 minutes. The examples are too numerous to detail here, but show a clear pattern of self-absorption and an absence of insight as to how their actions negatively impact not only their own lives and that of their daughter, but are also disruptive to the work of others, professionals, and even to court proceedings. The Golins were secretive, frequently claiming a right to privacy. They were reluctant to provide access to their present residence or business locations. Mrs. Golin was evasive as to the present location of a motor home registered in Nancy Golin's name. As a consequence, the Court has no clear information as to the condition of their residence or any business they own. The Court is without clear information as to their financial situation or assets. The Golins attempted to mislead this Court in their testimony, conceding certain facts only when confronted with evidence to the contrary. (Mrs. Golin testified twice that the motor home was registered in her name, correcting the misimpression only when confronted by the Court.) The Golins are quick to blame others and loathe to accept any responsibility for their or their daughter's problems. (See, for example, Mr. Golin's testimony regarding his felony conviction for insufficient funds checks) As to this issue alone (continuous, prolonged conflict with professionals and others related to the care of their daughter), the Court finds by clear and convincing evidence that both Mr. and Mrs. Golin are presently unable to provide for the best interests of their daughter, Nancy Golin, because of their history of continuous conflicts with most medical and other professionals.

The DDS, SARC, and the Public Defender also contend that the history of conflict between the Golins also renders them unfit to serve as Nancy Golin's conservator. Again there is ample evidence of past and present conflict. The Golins nicely demonstrated their inability to

work together throughout the trial. Their contentious relationship was on display - - from the beginning with a dispute as to who would give an opening statement first - - until the end of the trial when Mr. Golin, frustrated by Mrs. Golin's non-stop interruptions while he was addressing the Court, admonished her to be quiet or he would have to ask the Court to exclude her on his own behalf. The Golins' testimony about their marital strife and their interactions with the Mountain View Police Department, along with the Domestic Violence and the Family Court files are all consistent with the general impression caused by their behavior in the courtroom. (See: Exhibits: 20, 21, 23, 24, 25, 26, 26, 27, 28) The Golins appear unable to collaborate, unable to work as a team, and unable to coherently work towards the best interests of their daughter. Of concern was Mr. Golin's testimony that he routinely simply defers to his wife's decisions as to their daughter's care, apparently in hopes of preserving some marital harmony. This, of course, does not suggest that he will be necessarily working towards Nancy Golin's best interests. On this independent basis also (inter-personal conflict between Mr. and Mrs. Golin), the Court finds by clear and convincing evidence that Mr. and Mrs. Golin are unable to provide for the best interests of the proposed conservatee, Nancy Golin.

The DDS, SARC, and the Public Defender also contend that the history of past abuse and neglect of Nancy Golin while in the care and custody of Mr. and Mrs. Golin demonstrates their unfitness to serve as conservators of their daughter. The Court received evidence of Nancy Golin's dependency action held around 11/86 when the Juvenile Court found her to be a dependent child of the Court (Exhibits 17, 18). Nancy Golin was placed in foster care for a period of time. Mr. and Mrs. Golin's testimony about those events was similar to their approach to all their difficulties. They attacked the fairness of the proceedings ("kangaroo court" - Mrs. Golin) and minimized the significance of their misconduct. In the midst of a domestic dispute, the police were called by the apartment manager because

Mr. Golin left for work with Nancy Golin alone, locked in a second floor bedroom with a pot for toilet purposes and a bowl of dried banana slices. Nancy had eloped from that apartment before, apparently using a ledge on the second floor. In the same time frame, the mid 1980's, Nancy Golin received severe burns after locating a lighter discarded by Mrs. Golin. Nancy Golin required several weeks' hospitalization and a skin graft under an arm. Mrs. Golin testified that this event was not her fault and was entirely unexpected, even though Nancy Golin liked candles and had a sleep disorder causing her to get up at all hours of day and night after a dinner with candles the evening before. The evidence shows that Nancy Golin has the mind and inhibitions of a very young child. She lacks any significant appreciation of common dangers and must be constantly monitored and protected. Mrs. Golin still fails to understand her role in this event. Less than ten years later in 1995, tragically, Nancy Golin was severely burned again. She received second and third degree burns over 50% of her body, threatening her life. She was under the care and control of her father who was barbequing at his workplace. Mr. Golin likewise claims total surprise when Nancy reached over the barbeque and caught her clothing on fire again. Mr. and Mrs. Golin's past failures to closely monitor the safety of their daughter have resulted in two severe burn injuries to her, yet they still fail to grasp their role in these tragedies. Mrs. Golin admitted that on 1/23/99 Nancy Golin was taken to the Stanford Medical Center E.R. after ingesting tainted salmon found in the trash. She apparently was not closely monitored on that occasion either.

Again, on 11/4/00, Mrs. Golin went into the kitchen, leaving Nancy unattended temporarily and Nancy unscrewed the cap to some rubbing alcohol and put it to her lips, generating another visit to the Stanford E.R. On November 14, 2001, while under the care and control of both Mr. and Mrs. Golin, Nancy Golin was again left unattended and wandered off into the night in a commercial district of Palo Alto without her medication. Mrs. Golin

testified that Nancy Golin had earlier wandered off three to four times in the year 2001 and that the police had been called whenever she had wandered out of sight. Mrs. Golin cannot recall how many times Nancy Golin wandered off in the year 2000. The Golins' past failures to adequately monitor Nancy Golin while she was under their care and control have endangered their daughter and caused her to suffer severe injuries. The Golins' dysfunctional relationship with medical and other professionals, as detailed above, has also harmed their daughter. Considering this ground (abuse and neglect) alone, the Court finds there is clear and convincing evidence that the Golins' past history of neglect and abuse renders them unable and unfit to provide for the best interests of Nancy Golin as her conservator.

For the reasons stated above, therefore, the Court GRANTS the Petition of the State Department of Developmental Services without conditions and appoints them as Nancy Golin's permanent limited conservator with the powers requested in the Petition. DDS (or its designee) shall prepare a proposed Order accordingly (P.C. § 1830).

The Probate Code does allow for modification of limited conservatorships. Conceivably, in the future, the Golins might eventually apply again to become their daughter's limited conservator. This Court would not look favorably upon such a request unless and until the following minimum objectives (some may be inapplicable depending on whether one or both of the parents petition the court in the future) have been demonstrated by the Golins with clear and convincing proof:

- Satisfactorily complete any grant of probation
- Obey all laws
- Obtain valid California Drivers Licenses and Valid California Contractors Licenses
- Repay all outstanding debts
- Establish a history of at least 18 months of gainful employment (and net income there from) sufficient to support their household in either an apartment or house in California

- Transfer title of any property or vehicles in Nancy Golin's name to Mr. or Mrs. Golin's name
- Establish a history of at least 18 months of cooperation with all professionals connected with the care of their daughter, which includes eliminating the disruptive, hostile, and demanding behavior which is the predominant characteristic of their past relationships with professionals. It is strongly suggested that Mr. and Mrs. Golin utilize the services of Ms. Lamb (Nancy Golin's advocate) if they harbor any concerns about the care and treatment of their daughter by the DDS or its agents. Direct involvement by the Golins with the DDS, SARC, residential care facilities, medical and other professionals and other agents of the DDS will, in all likelihood, be extremely counterproductive to any hope of establishing a record of conflict-free cooperation.
- Establish a history of marital harmony and collaboration between spouses, including seeking marital and other counseling as needed, if both Mr. and Mrs. Golin petition again to be conservators
- Specifically comply with all DDS, SARC, residential care facility, medical, social work, and other related professional's protocols relating to the care and treatment of Nancy Golin
- Specifically comply with all visitation rules and requirements
- Establish a history of open cooperation with the Court's Probate Investigators during investigations of the Residence, assets, finances, and business conditions of Mr. and Mrs. Golin
- Continued litigation or the exercise of their statutory and Constitutional rights in state or federal court, including appeals or writs as to this Court's rulings specifically is not a factor to be considered in the above calculus

The Court Grants to the DDS the six requested powers without condition or limitation, including the power to control Nancy Golin's social contacts (which includes visits with her parents). The approach suggested by SARC (Marked as Court's Exhibit 2 and attached as an exhibit to this decision) appears reasonable to the Court and hopefully will provide guidance to all involved with this important issue. (The Court has read and considered the submissions of Mr. and Mrs. Golin on this topic and finds them unfocussed, and much less helpful.) Ultimately, though, discretion in the exercise of this, and the other powers, must remain with the limited conservator, the DDS.

This Court has no objection to a transfer of Nancy Golin's care to another regional center, provided such a transfer is in the best interests of Nancy Golin.

Finally, buried in the rhetoric and the overwhelming evidence of the Golins' problems, are legitimate concerns about the care of Nancy Golin when in the custody of the DDS, SARC, and residential care facilities. Efforts should be made to establish a repository of Nancy Golin's extensive past medical history for use by medical professionals as changes are made in her care providers. Reasonable requests for second medical opinions (and other suggestions for improved care) by Ms. Lamb should be considered. Efforts should be made to better document (and prevent) any injuries to Nancy Golin, from minor cuts and bruises - - to avulsed fingernails - - to fractured collar bones. Special care should be given to monitoring her seizure disorder and preventing any injuries which might result from unmonitored seizures if the present medication regime fails, in the future, to control her seizures. Within reason, Nancy Golin should occasionally be exposed to persons and circumstances in addition to day-programs, residential care facilities, and her "peers". SARC's Psychotherapeutic Medication Policy (Exhibit Y) adequately captures the Court's concerns regarding the use of psychotropic medications. To the extent Mr. and Mrs. Golin are not disruptive, abide by all rules and requirements

of SARC (or another regional center) and the residential care facilities, abide by all visitation rules and requirements, and do not endanger or neglect their daughter, they should be allowed reasonable visitation with their daughter, Nancy Golin.

10/21/2003 s/ WILLIAM F. MARTIN
William F. Martin

JAN 2 9 2005

No. 04-829

IN THE
Supreme Court of the United States

JEFFREY R. GOLIN AND ELSIE Y. GOLIN
ON BEHALF OF THEMSELVES
AND AS NEXT FRIENDS FOR DAUGHTER
NANCY K. GOLIN,
Petitioners

v.

CLIFFORD B. ALLENBY, DIRECTOR
DEPARTMENT OF DEVELOPMENTAL SERVICES,
STATE OF CALIFORNIA
AND
SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondents

On Petition for Writ of Certiorari
To The Supreme Court of the State of California

SUPPLEMENTAL BRIEF

JEFFREY R. GOLIN
ELSIE Y. GOLIN
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QUESTIONS PRESENTED

1. Whether *Gault*[1]-*Winship*[2] Sixth Amendment criminal due process guarantees in nominally civil commitment proceedings extend revitalized confrontation clause rules to civil commitment matters following *Crawford*[3].
2. Whether *Crawford* extends confrontation rights coverage abrogating hearsay exception rules to dubious types of business records that *are* clearly testimonial by their nature.
3. Whether *Teague*[4] retroactivity applies to the new procedural rule of *Crawford*, either as a "new watershed rule" or in a live case.

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[1] *In re Gault* 387 U.S. 1 (1967)
[2] *In re Winship*, 397 U.S. 358 (1970)
[3] *Crawford v. Washington, 541 U.S. 36 (2004)*
[4] *Teague v. Lane*, 489 U.S. 288 (1989)

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U.S. Constitutional Amendment VI:

> **In all criminal prosecutions, the accused shall enjoy the right to** *a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to* ***be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor****, and to have the Assistance of Counsel for his defence.*

OPINIONS AND ORDERS BELOW

The following new orders are included in the appendix.

December 29, 2004: December 29, 2004: Order of California Sixth Appellate District denying motion to vacate dismissal of appeal. (H026861) (App., *infra* 1a)

December 2, 2004: Order of California Sixth Appellate District [denying motion to extend time to complete procurement of trial transcripts, resultant failure to file opening brief] dismissing appeal (H026861) (App., *infra* 2a)

July 8, 2004. Order of California Sixth Appellate District granting motion to vacate dismissal and reinstating appeal to active status; [appellants now required to procure trial transcripts at own expense despite indigency] (H026861) (App., *infra* 3a)

These decisions are all unreported.

NEW CASES AND INTERVENING MATTER

A. State Appeals Court Dismisses Conservatorship Appeal After Denial of Record for Opening Brief

As of the date Petitioners' Original Petition for Certiorari was filed here on May 27, 2004, a state appeal was still pending in the California Sixth District Court of Appeals, from a grant of involuntary limited conservatorship to the State of California *In re Nancy Golin* denying her parents' competing petition to conserve their adult merely retarded daughter and appealing the adverse and unsupported findings of a state court trial, Hon. William F. Martin, presiding.

The instant Petition before this Court appealed in part from a denial of a Writ of Mandate from the California Supreme Court denying a grant of review of the denial of the Sixth District of our motion to provide transcripts of the oral proceedings of the trial court. The oral trial record was crucial to any appeal. The appeals court had twice denied petitioners' motions to provide the trial transcripts on appeal (3/4/04, 6/8/04), (contravening this Court's holding in *M.L.B. v S.L.J.*, 519 U.S. 102 (1996)). Grounds cited were petitioners' lack of funds to pay for them despite having been granted leave to proceed *in forma pauperis* on February 6, 2004, resulting from hardship from three years of undue burden from litigation. The appeals court directed petitioners to pay for the transcripts or proceed without them. It twice noticed a default for failure to procure them.

Petitioners in June 2004 secured the gracious assistance of appellate attorney William Gilg who moved to vacate a June 8, 2004 dismissal. It was granted August 8, 2004 (App., *infra* a3), on condition that the parents would pay for the transcripts themselves, despite the hardship. Mr. Gilg stated from experience it would be useless to appeal without transcripts. Mr. Gilg indicated to the state appellate court that the single reason that they had not filed a brief was the lack of access to an affordable transcript of the oral record of the proceedings. Mr. Gilg donated the bulk of his time, deferring payment to a later date so that the petitioners could concentrate first on paying for transcripts. Court of Appeals timelines do not wait for financial recovery.

In November, parent-petitioners began to recover and to obtain partial transcripts from the trial court reporter. One third of the transcripts were procured and now are available to be excerpted (App., *infra*, 1b). Mr. Gilg requested an extension of time from the Court of Appeals explaining petitioners' financial circumstances, to complete the procurement of the necessary transcripts with an extension to file an opening brief based on those transcripts. On December 2, 2004, this motion for extension was denied (App., *infra* 1a), and the appeal was dismissed, styled as a dismissal for failure to file an opening brief. A new motion to vacate dismissal was filed by Mr. Gilg on December 24, 2004 requesting a shorter extension of time, but this was also denied on December 29, 2004 (App., *infra* 2a).

Therefore, petitioners' appeal has now been dismissed as anticipated in the original petition for one reason: hardship caused by litigation and resulting inability to timely pay for complete trial transcripts making it impossible for their attorney to file an opening brief, fully ripening this petition.

B. New Rule of *Crawford*[5] Retroactively Denies Admission of Testimonial Evidence Relied On to Reach Adverse Findings in Trial Court Opinion

In May 2004, as the appeal from the October 17, 2003 Martin decision was still proceeding in state appeals court, this Court revitalized the Confrontation Clause of the Sixth Amendment in *Crawford v. Washington*, 541 U.S. 36 (2004). In light of *Crawford*, we have a new procedural rule that is material and relevant to Nancy Golin's conservatorship trial.

A critical reading of the Martin opinion (App., *Orig. Pet.* 14a-31a) discloses that essentially his entire opinion, including statements concerning the parent's interactions with doctors, or doctors' speculative opinions about the parents supposed inability to administer medications (*Id.*, 23a–24a), rests on out of court testimonial evidence admitted under a business records

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[5] See, "*Adjusting to Crawford: High Court Decision Restores Confrontation Clause Protection, Crawford v. Washington,* " Criminal Justice Summer, 2004 Feature, Richard D. Friedman, 19 SUM CRIM JUST 4, and "*Hearsay and the Confrontation Clause*", 77-MAY Wis. Law. ,16, Wisconsin Lawyer, May 2004. Steven M. Biskupic, 77-MAY Wis. Law. 16

exception to the hearsay rule, Cal. Evid. Code §1270. This rule was underpinned by presumed reliability rule of the previous Supreme Court holding in *Ohio v. Roberts*, 448 U.S. 56 (1980) abrogated by *Crawford*, applied to civil commitment proceedings. Martin inconsistently uses adverse testimonial evidence to trump and ignore favorable live testimony, using hearsay by doctors, psychologists, psychiatrists, social workers and protective service workers who never testified, in medical or other records. That approach was specifically rejected in *Crawford:* "Admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation." (*Crawford*, 124 S.Ct. at 1370)

The most prominent instance of this in Martin's opinion is ER Dr. Mark Bason-Mitchell's emergency room records criticizing the parents cited at length in Martin's decision reaching conclusions diametrically opposite to that of live witness Dr. Jerold Kaplan, who knew the family for nine years, unlike Bason-Mitchell. Bason-Mitchell could not qualify as an expert witness on psychotropics if he had appeared. His statement is undoubtedly "testimonial" under the *Crawford* standard. The State made no effort to call Bason-Mitchell to testify or show he was unavailable, nor was there a previous opportunity to cross-examine him. Martin accepted Bason-Mitchell's ER notes under the Cal. EC §1270 rule as presumed to be reliable, stating that it was *"not a legal objection [but] really argument as to the weight of the evidence*" (App., *infra* 5b). Martin overruled Mr. Golin's objections to the introduction of this evidence on October 8, 2003, saying (App., *infra* 6b):

> *"I will admit Exhibit 22 for several reasons. First of all, they're authenticated by the custodian of records and they look like business records...."*

Then Martin extensively cites Bason-Mitchell's written report for almost two pages in his opinion to purport that the parents are "uninformed" on the subject of psychotropic medications[6] to trump live evidence that such medications can be

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[6] Citing Martin's opinion quoting Bason-Mitchell's November 7, 2002 testimonial ER notes at length (App., *Orig. Pet* 22a-23a) "*The mother, father and the friend are all extremely concerned about the patient and the concept of the patient being withdrawn from trazodone and Risperdal. I have done*

(cont'd next page)

very dangerous given by expert psychiatric witness Dr. Hector Cerezo, SARC's own psychiatrist that prescribed Risperdal for Nancy based on misrepresentations by her state caregivers. Dr. Cerezo did appear as a cooperative witness, was qualified by the Court as an expert, and was cross examined on October 8, 2003, saying (App., *infra*, 3b)

> *A: (Cerezo) If we have to stop the medication and doesn't (sic) plan to replace it with another medication, we have to taper it off.*

And later Cerezo testified "*It can lower seizure threshold*" (App., *infra* 2a) stating that it was contraindicated for persons like Nancy having a pre-existing seizure condition and therefore, contrary to Bason-Mitchell's hospital records, dangerous. The Court itself (Martin) asked Cerezo what to do about tapering off these drugs, and Cerezo confirmed that it was necessary to slowly withdraw them (App., *infra* 2b-3b) contrary to Bason-Mitchell's hospital notes. Cerezo responded, if these drugs were not discontinued when such side effects as observed by the parents were seen, it could cause *death* (App., *infra* 4b).

Martin never even acknowledges live expert witness Dr. Cerezo or his name anywhere in his opinion, as if he never appeared, only the testimonial evidence of non-expert ER doctor Bason-Mitchell. Cerezo's testimony proved the parents were far from being hysterical, uninformed alarmists or troublemakers when they saw their daughter freezing up and showing unmistakable signs of tardive dyskinesia from state drugging. In fact, what concerned parent wouldn't be panicky after discovering their child had suffered painful, permanent untreated orthopedic and neurological injuries in unsupervised state care, with a doctor whose uninformed decisions meant that she would be forced to go back that night to the same facility where those injuries had occurred, with no way to stop it?

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my best, with lengthy conversations, and in nonmedical plain English, to explain to them that there is no acute withdrawal from Risperdal or trazodone. They refused to believe me, so I have also called the patient's primary care physician, Dr. Masada ...he assured me that his interaction with the family has been somewhat concerning, in that he has called the companies that produce these two medications and they feel that there is no acute withdrawal syndrome related to withdrawal of these medications."

Bason-Mitchell's testimonial evidence is unreliable hearsay that was itself a conduit for further removed hearsay, the telephone opinion of primary care Dr. Masada, who Bason-Mitchell relied on for the erroneous information that Nancy had been on psychotropics for only a month, whereas in fact we know from Cerezo and Stanford she had been medicated this way for one year at the discretion of her state caregivers. General practitioner Dr. Masada assigned by SARC, who had been Nancy's primary care doctor for only one week when Bason-Mitchell's ER referenee occurred, did not appear to testify either, and he also would not have passed qualification as an expert witness on either neurology or psychiatry, although he prescribed the psychotropics for Nancy after October, 2002.

Dr. Bason-Mitchell's live testimony was needed to explain why in one part of ER note cited by Martin (App., *Orig. Pet.* 20a) to trump live orthopedic expert witnesses Nguyen and Kaplan's assessment, based on one x-ray view where Bason-Mitchell did not find the dislocated shoulder whereas in another part he found it based on another view, which Martin cited that perhaps Nancy's shoulder wasn't dislocated. Board certified expert orthopedist Nguyen who also testified was disparaged because Martin thought he should have deferred to non-expert Bason-Mitchell's notes (App., *Orig. Pet.* 19a) though Nguyen also examined Nancy and the x-rays of the clearly visible dislocated shoulder[7]. Bason-Mitchell worked Nancy's shoulder back into its socket in the ER per his later note.

Martin proceeds to discredit the ripped off fingernail incident (*Id.*, at 20a). Dr. Morgan who examined it actually testified that the nail looked as if it *was* ripped off as suspected, but Martin concludes from an *earlier* Stanford *record* that it was not. Martin simply struck live expert medical testimony from Dr. Morgan, or prevented other testimony from being heard after a valid offer of proof (*Id.*, at 21a) concerning her grave esophageal injuries in state care that resulted from drugging.

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[7]Citing Martin's opinion (*Id.*, at 20a) "*Apparently [Nguyen] did not review the emergency room note by Dr. Mark Bason-Mitchell, Exhibit 22, who noted [shoulder condition at ER before and after manipulation]. Thus, apparently, Dr. Nguyen was not given all the information needed to fully inform him as to the condition of Nancy Golin's left shoulder*".

Dr. Kaplan was qualified by the trial court as a board-certified expert in orthopedic surgery and abuse. Yet, he was disparaged by Judge Martin as a mere "plastic surgeon" (*Id.*, at 19a) and his live testimony discounted in favor of non-appearing ER doctor Bason-Mitchell's exam notes (*Id.*, at 20a). Dr. Kaplan, though having cared for Nancy's neurological needs during past hospitalizations and examinations, was disregarded as to her seizure medications (App., *infra* 9b). He testified that the parents had no problem in dealing with him as Nancy's physician and saw no concern that would disqualify them from conserving her (App., *infra* 9b-10b).

Similarly, the Stanford hospital records of psych doctor Chris Hayward should be barred by *Crawford*. Hayward had never met the parents and had no direct knowledge whatever other than what he was told by the police, lacked any certification as an expert in neurology and did not appear for cross-examination, yet his speculative hospital records were a conduit for hearsay ["*apparently, the mother believed that the doctors did not know how to dose the Phenobarbital for Nancy, and therefore took matters into her own hands*" (App., *Orig. Pet.* 23a)] weighed more heavily by Martin than actual first hand neurological witnesses, Dr. Kaplan who reviewed the medical records, or records from neurology consultations.

In fact, seizures on November 15, 2001 proved Hayward *actually did not* know how to dose Nancy's Phenobarbital, but Mrs. Golin, acting on her neurologists' instructions, *did* and in fact *was* "smarter" than him in this instance. Indeed, in SARC care as of now, we know Nancy Golin's seizures are still not controlled. Visits with her parents are cut off for months without explanation to hide grave illnesses, and records that would prove this are concealed by her caregivers. Yet, Martin finds citing this "*impact on Nancy Golins medical care*" (*Id.*, at 22a), due to "*the Golins' mistaken overconfidence in their limited medical knowledge combined with their erroneous belief that they are smarter than others*" (*Id.*, at 24a).

Martin's opinion continues a litany of similar wildly speculative complaints based on testimonial hearsay evidence that could not possibly have stood up to cross-examination. These frivolous and overblown reports were invariably made under

strong pressure from SARC's attorneys but never confirmed in cross-examination. Dr. Gaskins did *not* call security on March 10, 2003 (*Id.*, at 23a), but merely threatened it without cause when ordered by SARC to stop talking to the parents for medical background and history. Mr. & Mrs. Golin *did* call police and paramedics to Embee RCF in March 2003 (*Id.*, at 23a) for a welfare check when in fact it turned out later as rumored that Nancy was in the hospital in critical condition[8] while SARC and Street were stonewalling all information. Martin's erroneous findings are a "*self-contained demonstration of Roberts' unpredictable and inconsistent application*" (*Crawford*, 124 U.S., at 1355) of rules of indicia of presumed reliability.

SARC's psychology expert witness Mulhoe similarly relied heavily on *20-year old* unreliable unsworn testimonial evidence provided by SARC of social workers and teachers in reaching her conclusions, and she had never even met the parents or evaluated their relationship with their daughter.

Martin's wildly speculative "finding", "*Armed with this information, they are unafraid to medicate Nancy Golin according to their own beliefs despite physician's orders to the contrary*," (*Id.*, at 24a) was never supported by testimony of the parents doing any such thing, or evidence of it, except third hand speculative hearsay from raw interns and nurses found in APS and hospital records, no better than gossip. Here, Martin is actually *complaining* that the parents informed themselves about drug side effects and were involved in their daughter's care. This is at best an old-fashioned attitude that should hardly disparage the parents' abilities as caregivers. Dr. Kaplan, who reviewed the medical records and testified, stated that the parents asked questions but always followed their doctor's orders after being explained (App, *infra* 8b) yet Martin either ignored his testimony or discounted it using hospital records that should be excluded under *Crawford*.

Martin cites APS testimonial records twice ("tainted salmon" and "rubbing alcohol" (App., *Orig. Pet.* 27a)) to counter

[8] Embee caregivers identified a different girl as Nancy to police when they arrived to dupe them into believing that Nancy was okay and the parents were merely being hysterical and disruptive, whereas she was only a few hours earlier rushed by ambulance to San Jose Medical Center.

the parents' live testimony of actually a beautiful demonstration of maternal overcautiousness. SARC psychologist Mulhoe relied heavily on APS records, as the State quietly scuttled their lead witness Santa Clara County APS Head Buckmaster.

ARGUMENT

I. *CRAWFORD* CONFRONTATION RULES APPLY TO CIVIL COMMITMENT PROCEEDINGS

Crawford rules apply to Sixth Amendment Confrontation Clause rights of criminal defendants. The conservatorship trial was not nominally a criminal case. This was a civil trial on the involuntary commitment of Nancy Golin facing what would undoubtedly become an unjust life sentence in neglectful and abusive state custody rather than liberty at home with her beloved family, where her personal liberty is inextricably intertwined with her parents' proven ability to care for her.

This Court has long held the rights of persons facing possible permanent loss of their liberty in civil proceedings are indistinguishable from defendants in a criminal proceeding, sufficient to trigger Sixth Amendment due process rights. (*In re Gault* 387 U.S. 1 (1967) *["...commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called 'criminal' or 'civil'"]* (*Id.*, at 50) and *In re Winship*, 397 U.S. 358 (1970)) *["civil labels and good intentions do not themselves obviate the need for criminal due process safeguards"]* (*Id.*, at 365-366) States including California have followed this holding (see, *Conservatorship of Roulet*, 152 Cal.Rptr. 425, 427-428 (1979), *People v. Thomas*, 566 P.2d 228, 232 (1977)). However, this Court has not reached the question of whether *Crawford* confrontation coverage extends to nominally civil commitment proceedings in light of past *Gault* and *Winship* decisions.

Lower courts are in conflict on whether to extend *Crawford* civil commitment proceedings. A few courts since *Crawford* favorably discussed but declined to so extend, (See *In re Commitment of G.G.N.*, 855 A.2d 569 (2004), *Civil Commitment of E.S.T.*, 371 N.J.Super. 562, *In re Civil Commitment of A.X.D.*, 370 *N.J.Super.* 198 (2004)). The Supreme Judicial Court of Massachusetts specifically declined to extend *Crawford* to one type of civil commitment matter (SVP) in *Com-*

monwealth v. Given, 808 N.E.2d 788 (2004), *cert denied, Given v. Mass.*, 125 S. Ct. 366 (2004). As the dissenters in *Commonwealth v. Given* said (Ireland, J.) *(Id., at 796)*:

> *"[a]lthough the holding in the Crawford case in inapplicable here because the proceeding was civil rather than criminal, it is the Court's reasoning regarding the reliability of out-of-court statements that applies in this context...."*

II. MANY TYPES OF BUSINESS RECORDS ARE CLEARLY OF DUBIOUS RELIABILITY AND SHOULD BE EXTENDED *CRAWFORD* COVERAGE

This Court's majority in *Crawford* thought it was important to mention that hearsay exceptions such as the ones founded upon business records were historically of the "firmly rooted" type deemed reliable by the exclusion rule, asserting:

> *"Most of the hearsay exceptions covered statements that by their nature were not testimonial – for example, business records or statements in furtherance of a conspiracy."* (Crawford, *124 S.Ct. at 1367).*

Much hearsay is plainly of dubious trustworthiness even though it fits within a "firmly rooted" exception. Exempting business records as a broad category from *Crawford* coverage provides gaping loopholes for unreliable evidence to fly under the radar of the confrontation clause, sapping *Crawford* and the Sixth Amendment of their vitality. Historical analysis forgets that the rubric of "business records" has expanded in modern times to encompass far more than routine quill and ink accounting ledgers as it did centuries ago when it first became "firmly rooted", like extrapolating from buggy whips to space ships. Some routine business records *may be* testimonial "by their nature", yet clearly the *hospital records* of unsworn non-*exparte* statements of non-expert physicians or specialists, unlicensed interns, nurses, social workers, protection advocates, or psychiatric reports often include purely speculative opinion or hearsay or provide conduits for hearsay.

Protective services records are known by research to be a notoriously unreliable form of business record[9]. Few checks on

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[9] See, *"Elusive Innocence: Survival Guide for the Falsely Accused"* by Dean Tong, Alpha Publishing, 2002.

anonymous, frivolous or malicious reports exist. Results vary from the critics' eight out of nine[10] to the current official figure of over 60%[11] of protective agency reports that are shown to be unfounded, unsubstantiated or false after cursory investigation. Investigations screening such reports were discovered here never to result in notations to the file indicating that they were shown to be unfounded, but were left to fester in the record just as they were originally reported. CPS/APS records are the quintessential example of why business records may not be broadly deemed non-testimonial by their nature as "firmly rooted" exceptions to hearsay without doing violence to the framers' plan and the sound reasoning of *Crawford*.

III. RETROACTIVITY SHOULD APPLY TO *CRAWFORD* RULES IN THIS LIVE CASE

Retroactivity should apply here now under the criteria of *Teague v. Lane*, 489 U.S. 288 (1989) to this "live case" which was still on appeal in state court when this petition was filed. Some circuit courts have strained to show that *Crawford* is *not* a watershed rule of criminal procedure subject to retroactive application under exception to general non-retroactivity of *Teague* rule.

CONCLUSION

For the foregoing additional reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

_____, _____

Jeffrey R. Golin Elsie Y. Golin

Dated, January 24, 2005

13736 De Leon Ave.,

Santa Nella, CA 95322

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[10] See, "*False Allegations, What the Data Really Show*", and "*Introduction: How the War Against Child Abuse Became a War Against Children*", *National Coalition for Child Protection Reform*, available online at http://www.nccpr.org

[11] See "*Testimony Regarding False Allegations Before the Select Committee on Children, Youth and Families*", by Douglas J. Besharov, November 28, 2004, and "*Testimony before the New York State Senate Majority Task Force on Children's Health and Safety*", March 3, 2004, Presented by Karen Schimke, President and CEO, Schuyler Center for Analysis and Advocacy.

APPENDIX A

New Opinions and Orders Below

Page	Attachment
1a	December 29, 2004: Order of California Sixth Appellate District denying motion to vacate dismissal of appeal. (H026861)
2a	December 2, 2004: Order of California Sixth Appellate District [denying motion to extend time to procure remainder of trial transcripts, and consequent failure to file opening brief] dismissing appeal (H026861)
3a	July 8, 2004. Order of California Sixth Appellate District granting motion to vacate dismissal and reinstating appeal to active status; [appellants now required to procure trial transcripts at own expense despite indigence] (H026861) (H026861)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

FILED
DEC 29 - 2004
Court of Appeal – Sixth App. Dist.
By_____
Deputy

DEPARTMENT OF DEVELOPMENTAL SERVICES,
Petitioner and Respondent,
v.
JEFFREY GOLIN, et al,
Objectors and Appellants

No., H026861
(Super. Ct. No. PR151096)
Santa Clara County

BY THE COURT:

Appellants motion for relief from dismissal is denied.

Date: DEC 29 - 2004 s/ RUSHING, P.J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

FILED
JUL 8 - 2004
Court of Appeal – Sixth App. Dist.
By_____
Deputy

In re the CONSERVATORSHIP OF THE PERSON OF NANCY GOLIN,

DEPARTMENT OF DEVELOPMENTAL SERVICES,
Petitioner and Respondent,
v.
JEFFREY GOLIN, et al,
Objectors and Appellants

No., H026861
(Super. Ct. No. PR151096)
Santa Clara County

BY THE COURT:

Appellants' motion to vacate dismissal order filed on June 8, 2004, is granted. The appeal is ordered restored to active status.

Appellants' request for extension of time to prepare trial record is granted.

The trial record shall be filed 60 days from the date of this order.

RECEIVED
AUG 05 2004
KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of California/County of Santa Clara
BY s/J. Nelson, DEPUTY

Date: JUL 8 - 2004 s/ Conrad Rushing, P.J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

FILED
DEC 2 - 2004
Court of Appeal – Sixth App. Dist.
By_____
Deputy

In re the CONSERVATORSHIP OF THE PERSON OF NANCY GOLIN, DEPARTMENT OF DEVELOPMENTAL SERVICES, Petitioner and Respondent, v. JEFFREY GOLIN, et al, Objectors and Appellants	No., H026861 (Super. Ct. No. PR151096) Santa Clara County

BY THE COURT:

The appellant having failed to file a brief after notice given under Rule 17(a), California Rules of Court, the appeal is dismissed

Date: DEC 2 - 2004 s/ RUSHING, P.J.

APPENDIX B

[Previously Unavailable]
Excerpts of Partial Record,
(USSC Rule 14(1)(i)(vi))

1b October 8, 2003, Excerpts of Santa Clara County Superior Court Probate Division, court reporter Rose Reummler's partial transcripts of oral record of conservatorship trial, direct and redirect examination of Dr. Hector Cerezo, psychiatrist (1-02-PR-151096)

7b October 7, 2003, Excerpts of Santa Clara County Superior Court Probate Division, court reporter Rose Reummler's partial transcripts of oral record of conservatorship trial, direct examination or Dr. Jerold Kaplan, orthopedics and surgery (1-02-PR-151096)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
DEPARTMENT 15 WILLIAM F. MARTIN, JUDGE

IN RE: CONSERVATORSHIP OF NANCY GOLIN

CASE NO.: 1-02-PR-151096
SAN JOSE, CA.; OCTOBER 8, 2003; A.M. SES-

REPORTER'S TRANSCRIPT
OF
TESTIMONY AND PROCEEDINGS

APPEARANCES:

FOR NANCY GOLIN:	OFFICE OF THE PUBLIC DEFENDER BY: MALORIE STREET, D.P.D.
FOR DEPARTMENT OF DEVELOPMENTAL SERVICES FOR SAN ANDREAS REGIONAL CENTER	STATE OF CALIFORNIA BY: H. DEAN STILES SENIOR STAFF COUNSEL BERLINER-COHEN BY: NANCY J. JOHNSON ATTORNEY AT LAW
IN PROPRIA PERSONA	GEORGIANNA LAMB
IN PROPRIA PERSONA	JEFFREY GOLIN
IN PROPRIA PERSONA	ELSIE GOLIN

ROSE M. REUMMLER, CSR NO.9053
OFFICIAL REPORTER

SAN JOSE, CA.; OCTOBER 8, 2003; A.M. SESSION
DEPARTMENT 15 WILLIAM F. MARTIN, JUDGE
(Dr. Hector Cerezo, psychiatrist, on witness stand, direct examination by petitioner Mr. Golin)

...

(p. 10, starting at line 20)

MR. GOLIN: I will ask about side effects. My question was about the warnings and precautions against using this drug.

THE COURT: I thought it was contraindications.

BY MR. GOLIN:

Q. Contraindications.

A. Contraindications, of course, the *(11)* contraindications, if they don't have the indication for, like psychotic disorder or mania.

Q. Well, would it be advisable if you knew a patient had seizure conditions to give them Risperdal? Would that be – would that be safe?

A. That's not a contraindication for Risperdal.

Q. What would it be?

A. We prescribe patients who are taking antiseizure medications – there are people who have seizures and have psychotic symptoms, and we prescribe them Risperdal.

Q. You do?

A. Yes.

Q. You're not aware of any warnings or indications against using these psychiatric medications with people that have a seizure conditions?

A. The patient – I'm aware of that. It can lower seizure threshold.

Q. Lower seizure threshold, right. What would you interpret that to mean?

A. That it can precipitate seizures for people who are predisposed to have seizures.

...

(p. 15, lines 7-22)

Q: What would be the correct clinical response to the ap-

pearance of tardive dyskinesia in a patient that was taking psychiatric drugs? What would be the correct clinical response?

A: Correct clinical response?

...THE COURT: What would you do if you had a patient taking a medication and you saw tardive dyskinesia?

THE WITNESS: You have to discontinue the medicine

BY MR. GOLIN:

Q: How do you discontinue it?

A: You gradually taper it down.

Q: You taper it down?

A: Yes. Slowly. And then with our current medical knowledge, we give them a replacement of Vitamin E....

Q: Thank you very much...

(p. 17, lines 13-28):

Q. If a person were exhibiting signs, what would the signs of neuroleptic malignant syndrome be?"

A: The first signs, the patient becomes stiff.

Q: Stiff?

A: *Yes.*

Q: Moves like a zombie?

A: They become immobile.

Q: Freezing up?

A: Freezing up. And they start having a rise in temperature.

Q: And if you, what would be the correct clinical response to the appearance of neuroleptic malignant syndrome?

A: Emergency Hospitalization.

Q: Emergency Hospitalization. Would you continue to give the psychiatric medication if you saw those symptoms? (p. 18, lines 1-8)

A: No. Discontinue all medications.

Q: Discontinue all medications. What could happen if you failed to do this?

A: They could die.

Q: Could cause death?

A: (Witness nods head)

THE COURT: He's shaking his head, yes.

THE WITNESS: Yes....

(p. 60, lines 22-26):

Q:(Golin) You testified a minute ago that you taper off gradually. I'm not understanding something here.

A: If we have to stop the medication and doesn't (sic) plan to replace it with another medication, we have to taper it off....

...

(p. 76, line 14, to p. 79, line 12)

THE COURT:...Exhibit 22, could I see that for a second. Are you offering this into evidence?

MS. STREET: I am, your Honor.

THE COURT: Now is the time to talk about Exhibit 22. This is the Alta Bates November 7, 2002, records that have been subpoenaed to the Court under seal and we've opened them here and marked them.

MR. GOLIN: Your Honor, I guess maybe I'm going to argue about this one. The doctor that evaluated Nancy –

THE COURT: Do you want them in evidence or not? That's the motion.

MR. GOLIN: I don't think they should be in evidence, your Honor.

THE COURT: The reason?

MR. GOLIN: Because it contains testimony from a person – from a non-expert in this medical field. He is not a person who is qualified to be an expert witness in neurology or psychiatry.

THE COURT: Mrs. Golin, stand up.

MS. GOLIN: Okay. Or he was busier than a one-armed paper hanger dealing with a dislocated shoulder, getting that back into place and [validating] a broken collar bone and treating her for pneumonia. He was also, you know – that wasn't his primary thing while she was up there.

THE COURT: What I'm hearing you say – I'm going to repeat that back – is your objection to the introduction of these medical records from Alta Bates Hospital dated November 7, 2002, is that the doctor who did the exam is not – is not qualified to render opinion that are reflected in the

report.

MR. GOLIN: Right. Unqualified testimony, your Honor.

THE COURT: The response?

MS. STREET: Your Honor, in this matter, these records are material and relevant. This is a medical doctor, an ER doctor that's a licensed medical professional. They are relevant and material. Dr. Cerezo called on these documents as to the allegation of tardive dyskinesia, the presentation of the proposed conservatee on this date. They're material, relevant indeed. There was testimony from the Golins' witness, Dr. Kaplan, yesterday, from review of these records he was familiar with the November 7, 2002, records, and I believe they should be admitted.

MR. GOLIN: I disagree, your Honor. Dr. Kaplan did not testify that he was present or at any interaction at the time of the November 7 examination. He said he only reviewed them later. If she says Dr. Cerezo called upon this evidence, then I think that means that part of Dr. Cerezo's testimony is in error.

MS. GOLIN: What he was relying on were the radiology – radiological reports, not this.

THE COURT: Have a seat, folks. Mr. Stiles had his hand up. Go ahead, sir.

MR. STILES: Your Honor, I'd like to point out to the Court that their own expert witness testified to the effect that any licensed medical professional could make the observations that were made by this doctor.

MS. GOLIN: Your Honor, this was not our medical expert. This was their medical expert. This is the person that San Andreas Regional Center had Nancy taken to for drugging. This was not our expert. This is our witness. We subpoenaed him as a witness. We don't think he's –

THE COURT: You're mistaken Mr. Stiles is referring to Dr. Kaplan, your witness yesterday afternoon.

MS. GOLIN: But he didn't refer –

THE COURT: Let's rule on this, folks. The objection is not a legal objection. It's really argument as to the weight of the evidence. And I'll consider this argument as to the weight, number one. I will admit Exhibit 22 for several reasons.

First of all, they're authenticated by the custodian of records and they look like business records. Number two, they were relied on by Dr. Cerezo today, who is the Golin's witness, but also by Dr. Kaplan yesterday. He did refer to having read these as well as looking at the x-ray films. So with respect, I think both of the expert witnesses brought in by the Golins looked at these records. And in terms of relevance, of course they're relevant. They show whether Nancy did or did not have side effects on November 7.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
DEPARTMENT 15 WILLIAM F. MARTIN, JUDGE

IN RE: CONSERVATORSHIP OF NANCY GOLIN

CASE NO.:
1-02-PR-151096
SAN JOSE, CA.;
OCTOBER 7-2003;
P.M. SESSION

REPORTER'S TRANSCRIPT
OF
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ROSE M. REUMMLER, CSR #9053
OFFICIAL REPORTER

SAN JOSE, CA.; OCTOBER 7, 2003; P.M. SESSION
DEPARTMENT 15 WILLIAM F. MARTIN, JUDGE

(Dr. Jerold Z. Kaplan, chief of surgery, expert in orthopedics and abuse, Alta Bates Hospital (Berkeley), on witness stand, direct examination by petitioner Mr. Golin).

(p. 107, starting at line 18)
Q: Could you please describe your interactions with myself and Elsie?
A. There's been extensive interaction with you and Elsie and me. The Golins are extremely questioning, would be the term that I would use. They do a lot of research on their own. They'll check the Internet, check books, ask an awful lot of questions. And you need to send a moderate amount of time with them, but I have always interpreted it as very concerned parents as opposed to – it's not – it's not been a negative interaction. It's been a lot of time. Spent more time with them than with *(108)* the average patient and probably with most of my patients' parents or family. But not what I would call an inordinate amount. I have a patient in the hospital today that has – actually has a wife and an ex-wife who are present and both help take care of him. Again, spend a large amount of time with them.

There are certain – they check things on the Internet, they look at books, bring things to me. They want to know, can we do that? Have you thought about this? Again, I think it's just that they're very concerned about this as parents.

Q. Have you ever observed us to facilitate the care for Nancy Golin, and if so, could you please describe your observations?

A. Yes, Particularly when Nancy's been hospitalized, particularly the one that just stands out in my mind is when she was hospitalized with a wound on the foot, its similar to the old comment about real estate. Location, location, location. The most important things are elevation, elevation and elevation, which means you need to stay in bed if you're in the hospital, foot elevated. Nancy is a wanderer. She will get up and meander. As a matter of fact, she did it

there. That's Nancy. She likes to wander. And you can't explain to Nancy they way you could to a normal individual, Look, it's very important. You need to stay in bed for a few days and keep your foot up. Nancy will get up, she will try to get up.

And when she had her surgery, Elsie sat by her side literally for about five days talking to her, singing to her, stroking her hair, stroking her hand and kept Nancy in bed. That was literally any time, day or night, depending on what else was going on. Sometimes early in the morning. Didn't matter when I was there, so was Elsie.

...

(page 122, starting at line 25)
BY MR. GOLIN:
Q. The question is: Are you familiar, just familiar, with Nancy's antiseizure medication history?
A. Yes, I am. Nancy has had a complex problem with seizures. I definitely would not be the person that would be the best qualified to maintain her antiseizure medication. However, from the records, and particularly from my experience with Nancy as a patient, she responds actually best to Phenobarbital. She has been – which is one of the old drugs for seizure medication. One of the old reliable standbys. She has been at times changed to other medications, other medications have been added, and in general, the physicians – from my review of her records at various times that she's been hospitalized, physicians have ended up going back to the basic Phenobarb which seems to control her the best.

...

(starting at p 124, line 1)
Q: Have you had an opportunity to observe us as Nancy's parents that would make it possible for you to form a personal opinion about us as Nancy's conservators?
A. I think so.
Q. And what would that opinion be?
A. In my experience and interaction, I have seen nothing that would concern me as far as Nancy being under the conservatorship of her parents.

Q. Dr. Kaplan, what is your usual charge for serving as an expert medical witness?
A. $2,500 per half day.
Q. And what are you being paid for your appearance here today?
A. Nothing.
Q. Then why are you here?
A. Because in this instance, I truly feel that Jeff and Nancy (sic.) do have Nancy's best interest at heart.
THE COURT: You mean Elsie?
THE WITNESS: Elsie. Excuse me, yes. That Jeff and Elsie do have Nancy's best interest at heart. Their interaction with me has certainly been such that I would have no hesitancy or concern in their being the prime conservators. I have been involved in numerous cases of abuse, child abuse, and elder abuse. Served as an expert on both sides, both at times for the state, at times for individuals. It's an area of interest to me, abuse. And I truly do not believe that this is the case at this time, and therefore when Jeff asked if I would testify and also indicated that they didn't have the funds at the present time to pay, I said I would be here.